FRISHBERG &PARTNERS
ATTORNEYS AT LAW

UKRAINIAN LABOR LAW

HANDBOOK

2014

FRISHBERG &PARTNERS ATTORNEYS AT LAW

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I. INTRODUCTION

As a general observation, Ukrainian labor laws are perhaps one of the least understood (and most frequently violated) areas of Ukrainian legislation. There are entirely too many Soviet-era rules and their amendments to list here, all of which are aimed at protecting the worker's rights. For that reason, the area of employment relations is a litigation minefield for any employer.

To better understand the archaic Ukrainian labor law system, it helps to categorize all persons residing in Ukraine into two groups of employment relationships: (1) labor employment agreements governed by the Labor Code of Ukraine; or (2) sub-contractual agreements governed by the Civil Code of Ukraine. The first category is further divided into three different types of labor agreements: (a) labor agreements of indefinite duration; (b) labor agreements of specific duration; and (c) labor agreements effective for the duration of a specific project.

A. General Requirements and Benefits

At the initial stages of employment, an employee is hired on the basis of a labor agreement, and may be placed on probation for a period not exceeding either three months or one month, depending on the classification of such worker under Ukrainian law. If the employee continues to work after such period has expired, the employee is considered to have "passed the test," and is entitled to all rights and protection under Ukrainian law.

Essentially, this means that Ukrainian employees are entitled to social security benefits as described below and must be paid at least the minimum monthly salary

during the course of a normal work week of no more than 40 hours. Any additional time put in by the employee, even if he or she is hired on a temporary basis, is subject to overtime payment rates. Depending on the actual duration of the employment term, the employee also is entitled to vacation, sick leave and a regular schedule of salary payments twice a month.

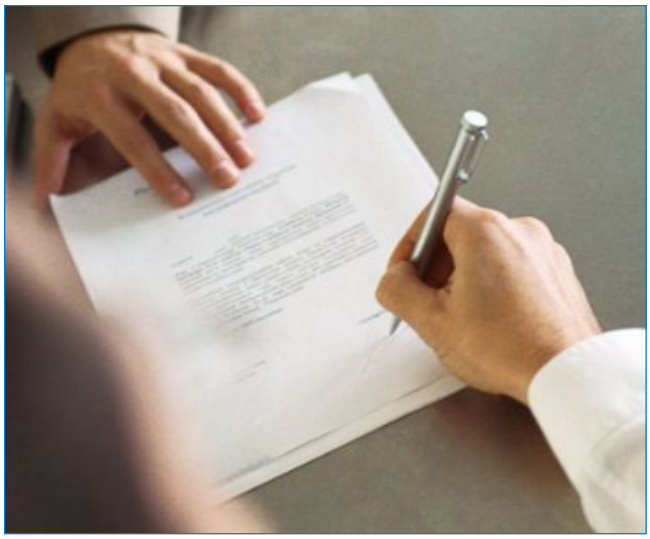
B. Social Security Benefits

By law, the Ukrainian government provides all employees (except subcontractors or consultants) with certain social protection by requiring all enterprises and organizations, except those specifically covered by relevant international agreements, to make deductions to the unified social insurance fund on behalf of its employees. In total, Ukrainian employers (joint ventures, 100% subsidiaries and representative offices with commercial activities), from their side, must pay toward the unified social insurance fund anywhere from 36.6% to 48% of its employees' monthly salaries depending on the employer's type of activity and level of risk at the workplace. Note that all social insurance contributions are made by the employer, in Ukrainian Hryvnia, on top of the employee's salary (i.e., not taken out of the employee's paycheck). In the event that the employer fails to make such payments, the employee is still entitled to certain social security benefits, but the tax authorities will levy fines retroactively if such violations are discovered anytime in the future.

Importantly, each employee must also personally make obligatory payments to the unified social insurance fund. In practice, Ukrainian employers, on behalf of their employees, withhold 3.6% on top of salary from salary amounts which do not exceed the maximum base (20,706 UAH as of December 1, 2013). The withheld amount is subject to contribution to the unified social insurance fund. In addition, employees are responsible for paying their own personal income tax outside of salary-related

payments. Please note that the above mandatory payments of employees working under labor agreements must be withheld from their relevant salaries (wages) by the employer. Consequently, employees receive a net salary after payment of all relevant taxes and social insurance contributions.

C. Employee Compensation



As a rule, salaries must be paid at least twice a month in Ukrainian hryvnias. Official salaries of employees are determined in accordance with the employment contract, but by law such salaries cannot be lower than the minimum monthly salary set by the Ukrainian government (the equivalent of 1,218 Ukrainian hryvnias as of December 1, 2013). Incidentally, the minimum monthly salary rate is subject to escalating changes throughout the calendar year to allow certain segments of the Ukrainian population (for example, senior citizens and certain government employees) to keep up with the spiraling cost of living.

The Ukrainian Labor Code also requires additional compensation for overtime, holidays and nighttime work. Likewise, an employee is entitled to receive overtime payments in the amount of double such employee's hourly rate for each hour worked overtime. Unfortunately, an employer cannot compensate employees for overtime by giving time off from work.

EMPLOYMENT CONTRACTS

Various employers, including wholly-owned foreign subsidiaries, joint ventures and even representative offices, employ so-called "labor contracts" as their preferred form of labor agreements because only a "labor contract" may contain provisions in addition to those contained in the Labor Code, including employment period, rights, obligations and benefits of the parties.

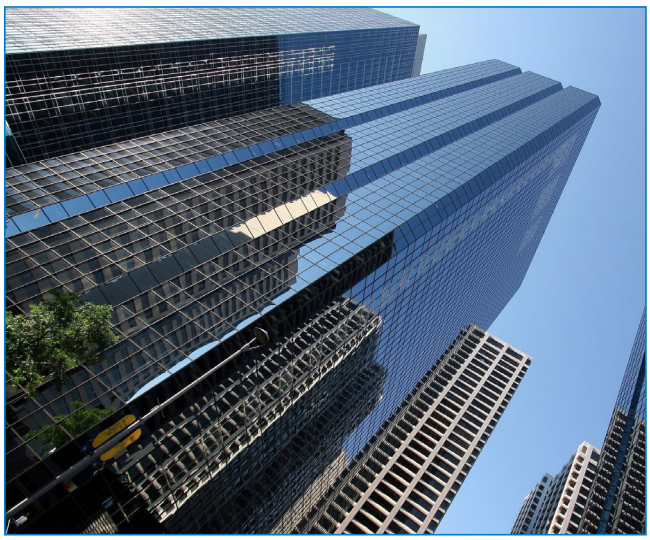
Importantly, the law allows the parties to include into labor contracts additional reasons for termination, such as disclosure of confidential information, harmful or competitive actions toward the employer, using company property for personal benefit, etc., which are not specifically provided in the Labor Code. On the other hand, dismissals cannot be arbitrary (e.g., for pregnancy or personal reasons unrelated to employment).

Thus, the labor contract affords the employer the widest latitude in instituting a labor relationship because all these additional rights and obligations are enforceable simply as contractual agreements of the parties. However, Ukrainian legislation provides one limitation: the terms of labor agreements should not deteriorate the status of hired workers of enterprises in comparison to conditions stipulated by effective Ukrainian labor legislation.

The Ukrainian Labor Code requires that all employees must be hired on the basis of a written labor agreement, which may be indefinite, for a definite term or for a specific assignment. Importantly, Articles 26-28 of the Code allow an employer to retain an employee for a probationary period of up to three months, depending on the classification of the employee under Ukrainian law. Once the probation period expires, however, the employee is entitled to all rights and protections under Ukrainian labor law.

The basic full-time employment conditions, provided by the Code, are as follows: the workweek must not exceed 40 hours. In a 40-hour week, employees work for five days. Although an employee may work a six-day week, he may not work more than seven hours a day.

The Labor Code severely limits and regulates overtime work for employees in Ukraine. An employee can only work 120 overtime hours in a one-year period. If an employee works overtime, the employer must pay her at the double rate. Employees also have a minimum of 24 calendar days as paid holidays. In addition to these paid holidays, employees are not permitted to work on any of Ukraine's 10 official holidays, such as Orthodox Christmas and Ukrainian Independence Day.



When entering into a labor agreement, a Ukrainian citizen must produce his or her passport or other identification document, a so-called "labor book" and, in cases required by law, a certificate of education (field of specialty, qualification), health and/or other documents. A labor agreement is deemed concluded and executed when the owner (employer) issues an order regarding the hiring of an employee.

An employee's labor book evidences an employee's employment record and must be submitted by an employee to an employer upon hiring. The instructions on the procedure for maintaining labor books at enterprises, institutions and organizations, are described in Order No. 58 of the Ministry of Labor, the Ministry of Justice and the Ministry of Social Protection of the Population of Ukraine on July 29, 1993.

Further, Resolution No. 301 of the Cabinet of Ministers "On Labor Books of Employees," dated April 27, 1993, requires all enterprises, institutions and organizations to keep their employees' labor books at their location as any document of strict accountability (i.e., financial, reporting

or accounting documents specifically determined by Ukrainian legislation). An employer must return an employee's labor book after their labor relations have concluded with the appropriate entries, stamps and signatures as required by the said Instructions.

PART-TIME EMPLOYEES

The Ukrainian Labor Code governs relations between employers and permanent or temporary employees. As with any labor relations in Ukraine, Article 21 of the Ukrainian Labor Code provides that temporary employees have labor rights equal to permanent employees. Further, Article 9 of the Ukrainian Labor Code states that any labor agreements, which worsen labor conditions in comparison with Ukrainian labor legislation, shall be deemed null and void.

In accordance with Article 21 of the Labor Code, an employee has the right to enter into a labor agreement with several enterprises at the same time, unless otherwise provided by Ukrainian legislation, a collective agreement or an individual agreement between the relevant parties. Part-time work is the performance by an employee, in addition to such employee's principal work, of other regularly paid work during an employee's free time from principal work at another or the same enterprise (or for a private entrepreneur). In order to work part-time, an employee does not need permission from its principal place of work. However, certain categories of employees are not allowed to perform part-time work in addition to their principal work.

According to Article 1021 of the Labor Code, part-time employees receive their salary for actually performed work. Part-time employees are entitled to annual leave at their additional place of work at the same time as at their principal place of work. Part-time employees may be dismissed according to general rules set forth in the Ukrainian Labor Code. Moreover, according to Article 431 of

the Labor Code, a part-time employee's labor agreement may be terminated at the employer's initiative upon the hiring of a full-time employee to take over such part-time employee's position. Please note that contractor or consultancy agreements under civil law are not considered part-time employment agreements under labor legislation. Finally, labor disputes involving part-time employees are resolved pursuant to the general procedure for resolving labor disputes.

INDEPENDENT CONTRACTORS

Ukrainian legislation distinguishes employees (whether temporary or permanent) from contractors and consultants based on the type of agreement concluded with the employer. Thus, if an individual concludes a labor contract with an employer, such individual may be considered an employee by law, whereas if an individual concludes a civil contract, such as a service or consulting contract, with an employer, such individual will be deemed an independent contractor, and not an employee.

In contrast to labor agreements, sub-contractual agreements typically contemplate hiring a worker to complete a specific task, work or service at his or her own risk (i.e., free lance workers). As elsewhere in the world, the sub-contractor maintains relative independence in performing the designated task and typically receives payment upon completion of services.

Many international companies prefer using the services of independent Ukrainian contractors in certain situations, including sales representatives, direct sellers, various consultants (including accountants and lawyers), computer programmers and software designers, customs brokers, among others.

Ukrainian independent contractors include legal entities or individuals who are officially registered as "subjects of entrepreneurial activities." Contractors are hired by a company on

the basis of a civil contract for a specific task at a specific cost. Since independent contractors and consultants are not considered employees, they are independently responsible for paying their own personal income tax (including profit tax) and do not receive the benefits of social security payments from employers.

OUTSOURCING/TEMPORARY STAFF

For the first time, the Law "On Employment of the Population" introduced the concept of temporary staffing (i.e., hiring of staff for further work at other employers) or outsourcing into Ukrainian legislation by creating the possibility for "intermediary services in employment". These services also include the search for employment or laborers and recruitment, including the search for Ukrainian employees for work abroad. Entities which hire employees for further work in Ukraine with other employers under labor arrangements must obtain a simple permit to provide their services, while entities which search for Ukrainian laborers for hire abroad must obtain a license to provide their services.

EMPLOYMENT TAXES

With respect to salary-related taxes, the employer, as the tax agent, must withhold income tax from each employee's salary at the rate of 15%/17%. The 15% rate is applied to the amount of the employee's monthly salary that is less than or up to 11,470 Ukrainian hryvnias and the 17% rate is applied to any amount of salary that exceeds 11,470 Ukrainian hryvnias. As an example, if the individual's monthly salary is 25,000 UAH, then 11,470 UAH will be taxed at the 15% rate, while 13,530 UAH will be taxed at the 17% rate. Please note that the minimum monthly salary rate usually increases over the course of the

calendar year. Therefore, rates should be regularly checked for 2014 once the 2014 State Budget has been passed.

A unified social insurance/pension deduction must also be withheld by the employer as tax agent in the amount of 3.6%. In 2013 the maximum tax base for withholding and paying social insurance contributions is as follows: from January 1 until November 30 the maximum monthly tax base is 19,499 UAH; and from December 1 until December 31 it will be 20,706. To explain, social insurance contribution rates are only applied to this maximum base and are not applied to any amount in excess of such maximum base. To follow our example, if the individual's monthly salary is 25,000 UAH on December 1, 2013, then the unified social insurance contribution will be 20,706 UAH x 3.6% = 745.42 UAH.

From the employer's side, a unified social insurance/pension contribution must be paid directly to the state unified social insurance funds based on the amount of each employee's salary. This unified social insurance contribution is between 36.6% and 48%, depending on the risk involved in the employment conditions. In 2013 the maximum tax base for withholding and paying social insurance contributions is as follows: from January 1 until November 30 the maximum monthly tax base is 19,499 UAH; and from December 1 until December 31 it will be 20,706. To explain, social insurance contribution rates are only applied to this maximum base and are not applied to any amount in excess of such maximum base. To follow our example, if the individual's monthly salary is 25,000 UAH on December 1, 2013, then the unified social insurance contribution from the employer's side will be 20,706 UAH x 36.6% = 7,578.40 UAH.

UKRAINIAN FOREIGN WORK PERMITS

All foreign employees, except foreign employees of representative offices, must submit an application to obtain their Ukrainian foreign work permit, accompanied by the required documents, including:

- Copy of the identification page of the foreigner's passport (with a certified translation thereof) and all pages with entry/exit stamps and visas.

- Copy of the document(s) evidencing the foreigner's education (diploma) or qualifications (legalized or certified by Apostille and accompanied by certified translation into Ukrainian);

- Certificate from the authorized body of the country of origin evidencing that the foreign citizen, who is located outside of Ukraine during the consideration of the work permit application, is not serving a sentence for committing a crime and is not under criminal investigation (legalized or certified by Apostille and accompanied by certified translation into Ukrainian). In certain cases, this document can be obtained in-country if the foreigner is present during the work permit application process;


ДЕРЖАВНИЙ ЦЕНТР ЗАЙНЯТОСТІ
МІНІСТЕРСТВА ПРАЦІ ТА СОЦІАЛЬНОЇ ПОЛІТИКИ УКРАЇНИ
STATE EMPLOYMENT CENTRE
OF THE MINISTRY OF LABOUR AND SOCIAL POLICY OF UKRAINE
ДОЗВІЛ НА ПРАЦЕВЛАШТУВАННЯ №
EMPLOYMENT PERMIT
від «___» _____ ____ р.
Виданий роботодавцю
на використання праці на посаді (за фахом)
громадянина
Дійсний до «18» 02 2012 р. М.П.
Дійсний до «___» _____ 200_ р. М.П.
Дійсний до «___» _____ 200_ р. М.П.
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- Witten confirmation issued by a medical institution confirming that the foreign citizen is not ill with chronic alcoholism, substance abuse, narcotics abuse or other infectious disease, the list of which is issued by the Ministry of Health Protection of Ukraine (legalized or certified by Apostille and accompanied by certified translation into Ukrainian).

All documents issued in a foreign country in its official language must be translated into Ukrainian and either certified by Apostille or legalized with the Ukrainian consulate in the country of origin. Since Ukraine is a signatory to the 1961 Hague Convention Abolishing

the Requirement of Legalization for Foreign Public Documents, Apostille stamps from most countries are accepted.

The Work Permit Commission has fifteen (15) calendar days to review a work permit application (or application for extension) and issue its decision upon receipt of the entire packet of documents in good order. The decision is executed in the form of an order and sent to the employer in writing no later than three (3) working days from the date of the final decision. The information will also be placed on the website of the local Employment Center where the foreign citizen will be hired.

Once duly informed, the employer has thirty (30) calendar days to transfer the state duty for consideration of the work permit application to the special bank account of the State Social Insurance Fund for Unemployment. Payment must be confirmed by a payment receipt. In case the employer fails to make payment within thirty (30) calendar days, the decision on the issuance of the work permit will be cancelled. Once payment is confirmed, the local Employment Center will issue the work permit within ten (10) working days from the date of the relevant bank transfer.

Finally, after the employer receives a work permit and concludes a labor agreement (contract) with the foreign citizen, it is obliged within three (3) working days to submit a duly certified copy of the said agreement (contract) to the local Employment Center. In case the employee fails to commence employment within the term set forth in the labor agreement (contract) without substantiated grounds, the employer is obliged to inform either the local Employment Center or local immigration office about such situation within five (5) working days. The employer is also obliged to inform the local Employment Center regarding the premature termination or expiration of the labor agreement (contract) with the foreign citizen within three (3) working days of such event.

Work permits are valid up to one year, but may be extended if an application is filed with the relevant State employment center up to one month before expiration of the employee's current term of employment.

LEAVE OF ABSENCE

All issues regarding leaves, including parental, maternity and other leaves, are governed by the Ukrainian Constitution (Article 45), the Law of Ukraine No. 504/96-VR "On Leaves," dated November 15, 1996, and the Labor Code. The Law "On Leaves" establishes five basic types of leaves, including (i) basic and additional annual leaves, (ii) leave in connection with education or athletic events, (iii) sabbatical, (iv) social leave (maternity, parental, etc.), and (v) unpaid leave.

Below we briefly discuss annual, maternity, parental and unpaid leave of absence.

1. Annual leave

According to Articles 74 and 75 of the Labor Code, Ukrainian citizens working in enterprises, organizations or institutions, regardless of their ownership form and type of activity, as well as those working under a labor agreement with a physical entity (individual), are entitled to an annual (basic and additional) leave without sacrificing their position and salary. Employees are entitled to a basic annual leave of no less than 24 calendar days for each year of service (the basic annual leave is 31 calendar days for those under 18). In special cases provided by Ukrainian legislation, employees working in harmful and difficult conditions or working in certain types of labor are entitled to additional annual leave in accordance with specific Ukrainian legislative acts.

Article 79 of the Labor Code provides that employees, together with their employers or the authorized representatives thereof, develop a schedule of annual leave. An employee's leave schedule must be coordinated with his or her employer in such a manner that the interests of both parties are taken into account. Please note that an employee must be notified of the commencement date of his or her leave no later than 2 weeks from the date agreed upon in the leave schedule. Employees must receive their salary for their entire annual leave time no later than 3 days before commencement of leave (Article 115 of the Labor Code).

Significantly, sick and maternity leaves are not included into annual leaves, provided that such leaves are evidenced by a properly executed medical document.

2. Maternity leave

Pursuant to a duly executed medical conclusion of pregnancy, females are entitled to paid maternity leave, which consists of 70 calendar days before delivery and 56 calendar days as of the day of delivery. In case of delivery of two or more children, a female is entitled to 70 calendar days of leave after delivery. Notably, if a female adopts a child directly from a delivery ward, then such female is entitled to 56 days of paid maternity as of the date of adoption (70 calendar days upon the adoption of two or more children).

3. Parental leave

Article 18 of the Law "On Leaves" provides that upon completion of maternity leave, if a female so desires, she may take a leave to care for her child up until such child reaches the age of three. An enterprise, at its own expense, may grant to mothers partially paid leave or unpaid leave for a longer period of time. Such leave may also be partially or fully used by a child's father, grandparents or any other relative, who in fact is taking care of such child, or by persons who adopted a child.

A working mother, who has two or more children of less than 15 years of age or a disabled child, as well as single parents (or in case of lengthy illness of one parent), adoptive parents and guardians, may, upon request, receive an additional paid leave of 10 calendar days. In case of substantiated necessity, this additional leave may be increased up to 17 calendar days.

4. Unpaid leave

Employees are entitled to take a leave without pay in the following cases and for the following terms:

1. mothers or fathers, raising children without a mother (including cases when a mother is undergoing lengthy treatment in a medical institution), with two or more children under the age of 15 or a handicapped child: up to 14 calendar days annually;

2. husbands and wives, who are taking post-birth leave: up to 14 calendar days;

3. mothers and other relevant individuals (relatives, husbands, adoptive and foster parents, etc.) in case a child needs nursing or care at home: for the duration determined in the relevant medical findings, but only up until the child reaches the age of six (or the age of sixteen in diabetes type I cases). Additional leave without pay may be taken by a parent, relative and/or guardian in case of a declared quarantine on children up to 14 years of age;

4. war veterans, individuals, having special privileges from the country, and individuals, to which the Law "On the Status of War Veterans and Guarantees of their Social Protection" applies: up to 14 calendar days annually;

5. individuals, having special labor-based privileges from the country: up to 21 calendar days annually;

6. pensioners and disabled individuals of the 3rd group: up to 30 calendar days annually;

7. disabled individuals of the 1st and 2nd groups: up to 60 calendar days annually;

8. individuals entering into marriage: up to 10 calendar days;

9. employees, in case of the death of blood relatives or relatives by marriage (including husband, wife, parents, in-laws, child (stepchild), brothers and sisters): up to 7 calendar days without taking into account the time necessary for traveling to and from the place of burial; in case of the death of other relatives: up to 3 calendar days without taking into account the time necessary for traveling to and from the place of burial;

10. employees, caring for sick blood relatives or relatives by marriage, who need permanent, external care according to the conclusion of a medical institution: the duration determined in the medical conclusion, but for no more than 30 calendar days;

11. employees, for completion of sanatorium-spa treatment: the duration determined in a relevant medical conclusion;

12. employees, permitted to take entrance examinations in higher educational institutions: up to 15 calendar days without taking into account the time necessary for traveling to and from the relevant study institution;

13. employees, permitted to take entrance examinations for post-graduate studies, whether or not such employees continue normal work, as well as employees in

post-graduate studies while continuing normal work and successfully fulfilling their individual plan of preparation: for the duration necessary for traveling to and from the higher learning or scientific institution;

14. persons holding more than one job: for the period until the end of leave in their principal place of work;

15. veterans of labor (individuals working a minimum of 25 years): up to 14 calendar days annually;

16. employees, who did not use their annual basic or additional leave from a former work place in full or in part, and who received monetary compensation for such: up to 24 calendar days in the first year of work in their current enterprise before they have uninterruptedly worked 6 months;

17. employees with children up to 18 years of age, who are entering an educational institution in another city, town, etc.: 12 calendar days without taking into account the time necessary to travel to and from such educational institution;

18. employees studying in post-graduate school while continuing normal work, are entitled to one day off from work per week, if they so desire, without pay for the duration of their fourth year of studies. Moreover, an employee and employer (or its authorized body) may agree upon a leave without pay due to family circumstances or other reasons, but for no more than 15 calendar days in a year.

DISCRIMINATION IN THE WORKPLACE

Article 24 of the Ukrainian Constitution guarantees all citizens equal constitutional rights and liberties, as well as equal treatment under law. According to Article 24, there shall be no privileges,

limitations or restrictions based on race; skin color; political, religious and other beliefs; sex; ethnical and social origin; ownership status; place of residence; language or any other ground.

Further, Article 24 guarantees equal rights for men and women by way of providing equal opportunities with respect to socio-political and cultural activities, the receipt of an education and professional training, and work and compensation for such work. Equal opportunities for men and women are also guaranteed by way of special measures with respect to labor, safety and healthcare for women and pension benefits for women, the creation of an environment allowing women to combine work and motherhood, legal protection and material and moral support of motherhood and childhood, including the provision of paid leaves and other benefits to pregnant women and mothers.

WORKERS COMPENSATION

Chapter XVII of the Labor Code provides that assistance in connection with a temporary inability to work is paid in case of illness, mutilation, temporary transfer to another job in connection with an illness, external care of a family member, quarantine, sanatorium-spa treatment and prosthetic fitting in an amount of up to full salary, depending on the circumstances. In case of illness, social insurance assistance is paid until the employee's ability to work is restored or such employee is declared disabled.

The Law of Ukraine No. 2240-III "On Mandatory State Social Insurance in Connection with Temporary Work Disability and Funeral Expenses," dated January 18, 2001, regulates the legal, organizational and financial grounds for mandatory state social insurance payments to citizens in case of a temporary inability to work, among other issues. According to Article 51 of the above Law, an employee is entitled to social insurance assistance due

to a temporary inability to work, including any illness, on the basis of a certificate of temporary inability to work, which must be issued by a medical institution.

The form of such certificate was approved by the joint Order No. 532/274/136-oc/1406 of the Ministry of Health, the Ministry of Labor and Social Policy, and the Social Insurance Funds for Temporary Disability and Professional Accidents and Illnesses of Ukraine "On Approval of the Form and Technical Description of a Certificate of Temporary Disability and Instructions on the Procedure of Filling Out a Certificate of Temporary Disability," dated November 3, 2004, registered with the Ministry of Justice of Ukraine on November 17, 2004.

LABOR UNIONS AND WORKERS' COLLECTIVE

Many production enterprises, especially privatized plants with redundant employees, involve specific problems related to trade unions. According to Article 2521 of the Labor Code, the workers' collective of an enterprise is composed of all citizens, who participate in the activity of such enterprise via their labor efforts pursuant to labor agreements (contracts) or any other form regulating labor relations between an employee and an enterprise.

With reference to trade unions, according to Article 36 of the Ukrainian Constitution, Ukrainian citizens have the right to unite into political parties and other public organizations in order to protect their rights and liberties and satisfy their political, economic, social or other interests. Article 36 also entitles citizens to form trade unions in order to protect their labor and socio-economic rights and interests.

Relations between owners (employers) and employees, as a rule, are regulated on the basis of a collective agreement. Collective agreements must be concluded in any legal entity, which uses hired labor, between the owner (or its authorized body) and the worker collective (or its

trade union or other authorized body). The rules, terms and conditions for executing collective agreements are set forth in the Law of Ukraine No. 3356-XII "On Collective Agreements," dated July 1, 1993.

If a trade union functions in the company, then dismissals can usually take place only with the consent of the trade union (except in cases of company liquidation, etc.) The trade union will review the statements of the owner of the company and, within a 10-day period, give a written report informing the owner of its decision.

The owner has the right to dismiss an employee within a period of one month after receiving consent from the trade union. If an employee files suit against an owner for wrongful dismissal, and it is discovered that the owner acted without the consent of the trade union, the court must ask the trade union's permission to proceed with the dismissal. If the trade union refuses to give its consent to the employee's dismissal, the court will order the owner to pay the salary of the employee for the period of his/her involuntary truancy.

If there is a dispute regarding the dismissal of an employee in the case of changes in the enterprise's production and labor structure, (i.e., liquidation, restructuring or changing of profile), the court will inquire as to whether the company has been "restructured" or any other changes have taken place, and if so, whether such changes necessitated termination of the workforce. The court will also determine whether the employee was wrongfully dismissed in violation of his rights to remain at work.

When it comes to hearing collective labor disputes, the Law of Ukraine No. 137/98-VR "On the Procedure for Resolving Collective Labor Disputes (Conflicts)," dated March 3, 1998, determines the legal and organizational grounds. For this purpose, the President of Ukraine issued Decree No. 1258/98, dated November 17, 1998, which established the National Service of Mediation and Conciliation (the "NSMC") and approved its regulations.

The NSMC is a permanently active State body, which facilitates the resolution of collective labor disputes. The NSMC acts pursuant to the Ukrainian Constitution, the Law of Ukraine "On the Procedure for Resolving Collective Labor Disputes (Conflicts) and other laws and regulations of Ukraine, the President and the Cabinet of Ministers. On November 16, 2000, the NSMC issued Order No. 96, which approved the Instructions on the procedure for preparing and filing with courts an application on the resolution of collective labor disputes (conflicts). These Instructions were completely redrafted on August 31, 2005 under the NSMC's Order No. 91, which is still effective today. All collective labor disputes (conflicts) must be filed in accordance with the said Instructions.

Procedurally, collective labor disputes, depending on the subject matter of the dispute, are either submitted to a conciliation commission or labor arbitration panel. In case the parties to a labor dispute (conflict) are unable to resolve their dispute, the case may be further submitted to a court of general jurisdiction.

EMPLOYEE HEALTH AND SAFETY

The Law of Ukraine No. 2694-XII "On Labor Safety," dated October 14, 1992 (as further amended), governs health and safety issues related to the workplace. This Law covers labor safety issues for employees, as well as contractors, consultants, visitors, etc., and is aimed at removing risks to the health and safety of the said persons. Pursuant to the requirements of the Law "On Labor Safety," the Ministry of Labor and Social Policies of Ukraine, together with the Committee on Supervising Labor Safety Issues, approved the Regulations on developing labor safety instructions. On the basis of the said Regulations, all enterprises, organizations and institutions must approve their own labor safety instructions. All employees, contractors, consultants, etc., must comply with the instructions developed for the relevant workplace.

The Law "On Labor Safety" applies to contractors, consultants, citizens, state workers, etc, who visit the workplaces of other enterprises, institutions and organizations. Article 26 of this Law provides that an employer (owner) must compensate any damages incurred by other enterprises, citizens and the State on the general compensation principles provided by Ukrainian law in case such damages arise as a result of violations of labor safety requirements. Additionally, if an employer (owner) fails to comply with the labor safety requirements, such employer (owner) must pay social insurance contributions for injuries at work and professional diseases at higher rates (as established by the Cabinet of Ministers).

SOCIALLY-PROTECTED AND DISABLED INDIVIDUALS

The Law No. 5067-VI "On Employment of the Population", dated July 5, 2012, introduced several categories of individuals who enjoy additional guarantees for job placement. These categories include:

1. one parent or guardian who supports a child of up to six years of age, or one parent or guardian without a spouse who supports a child of up to fourteen years of age or a handicapped child, or one parent or guardian without a spouse who supports a child born handicapped (regardless of age) and/or a group I handicapped individual (regardless of reason for handicap);

2. orphans and children without parental support and individuals who have reached the age of fifteen and may, as an exception, be employed with a parent or guardian's consent;

3. individuals released from imprisonment or mandatory medical treatment;

4. youths who have finished or terminated studies in general, technical and higher educational institutions or who have been released from military service or alternative service (within

six months after completion or termination of studies or service) and who are hired for the first time;

5. individuals who have ten or less years left prior to attaining pension rights according to Article 26 of the Law "On Mandatory State Pension Insurance";

6. individuals who have reached fifteen years of age and who, with the consent of a parent or guardian, may be employed as an exception.

Employers with over 20 employees must meet a quota of hiring 5% of the above individuals within their staff for the last calendar year. Employers are obliged to independently monitor and observe this quota and report their compliance on an annual basis. Failure to comply with the quota may lead to a penalty in the amount of 30 to 100 non-taxable minimum salaries of an individual (510 to 1,700 UAH or approximately between 64 and 213 USD). An additional fine in the amount of 2 minimum salaries may be applied in case of an unsubstantiated refusal to hire an individual from the above categories.

Irrespective of the organizational form, every company is required to hire disabled individuals. The number of handicapped persons should constitute at least four percent of the average amount of the workforce of the company for one year. In cases where the organization employs between 8 and 25 individuals, at least one handicapped person should be employed, unless otherwise provided by specific laws. Enterprises employing less than 8 persons are exempt from such quota. Employers that do not comply with the above rules are required to pay annual penalties, which are calculated as the average annual salary of employees of that company for each work place that should be but is not occupied by a disabled person. Failure to comply with the quotas for the employment of disabled persons

may subject the employer to a fine in the amount of 10 to 20 non-taxable minimum monthly salaries of an individual (170 to 240 UAH or approximately between 21 and 43 USD).

WORKTIME REGULATIONS

In general, according to Article 50 of the Ukrainian Labor Code, the working time for employees (part-time, full-time and temporary) cannot exceed 40 hours per week. The Labor Code provides a shortened work week for employees aged 18 years or younger, specifically, 36 hours per week for employees between the ages of 16 and 18, and 24 hours per week for employees between the ages of 15 and 16 (or 14 and 15 for students working during summer vacation). A shortened work week of 36 hours is established for employees working under unhealthy working conditions.

Moreover, the Labor Code establishes either a five-day work week for employees (with two days off) or a six-day work week (with one day off). A six-day work week may be established by enterprises, organizations and institutions if a five-day work week would not be expedient to its business, taking into account the character of production and working conditions for employees. For six-day work weeks, the working hours for one day may not exceed 7 hours for a 40 hour work week, 6 hours for a 36 hour work week and 4 hours for a 24 hour work week. The Labor Code also establishes special rules for holidays, weekends, nighttime work, working in shifts, etc.

Please note that the above provisions of the Labor Code apply for employees only, and not for consultants and independent contractors, unless specifically provided otherwise.

RECORD-KEEPING AND REGULATORY COMPLIANCE

In addition to financial, corporate records and accounting documents, employers must maintain their employees' labor books (documents that evidence an employee's employment record and which must be submitted by an employee to an employer upon hiring.

With reference to maintenance of personal data, relations connected with the receipt and processing of personal information in Ukraine are defined in Articles 32 and 34 of the Ukrainian Constitution and in the following laws: Law No. 2297-VI "On Personal Data Protection", dated June 1, 2010. Moreover, issues related to the protection of an individual's honor, character and business reputation are regulated by the Civil and Criminal Codes of Ukraine.

Ukrainian law does not require that employers register their employee databases with the state. However, other databases, such as client databases may need to be registered. There are still many conflicts, flaws and loopholes, which adversely affect the constitutional rights and liberties of Ukrainian citizens. However, the Law "On Personal Data Protection" was drafted in close compliance with European standards as far as liability for protection of personal data is concerned.

TERMINATION OF EMPLOYMENT

The procedure for terminating Ukrainian employees embodies many of the socialist ideas that existed before Ukrainian independence, when the average employee's right to work was guaranteed by extensive legislation. To this day, the courts lean heavily in favor of the employee in dismissal suits.

At first glance, this system of worker protection seems overwhelming to foreign businesses who wish to streamline their operations in light of the existing economic situation. However,

careful adherence to the rules and prudent legal preparations for effective termination makes the process of dismissing employees as simple as the hiring of such employees.

Generally, employment termination can be either amicable (mutual consent) or unilateral. In the first instance, Article 36 of the Labor Code provides that parties to a labor agreement may agree to terminate their contractual relations due to:

1. mutual consent of the parties;

2. expiration of the labor agreement (contract), except in cases when labor relations actually continue and neither party has any objections as to termination;

3. military draft or recruitment of an employee;

4. termination of the labor agreement (contract) at the initiative of the employee, the owner, a body authorized thereby, a trade union, several trade unions or other bodies which are authorized to represent the workers' collective;

5. in case the employee agrees to be transferred to another company or affiliate;

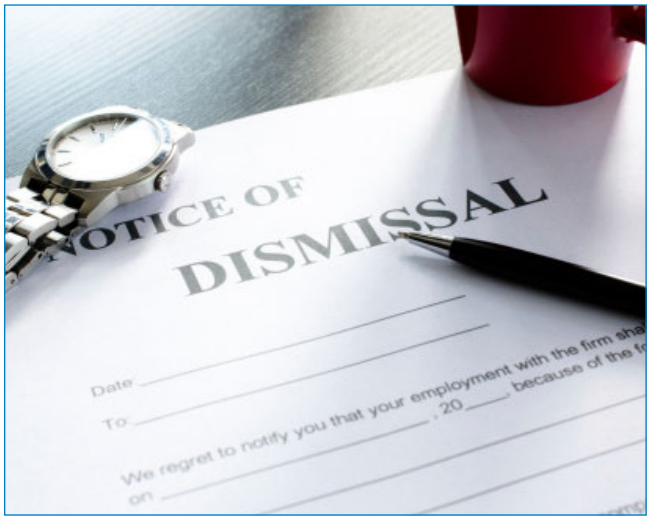
6. refusal of the employee to be reassigned to another location of the enterprise, institution or organization, or the employee's refusal to work due to significant changes in labor conditions;

7. court order for imprisonment of the employee or a court sentence in which the employee is found guilty of corruption under the Law "On Measures Against and Prevention of Corruption"; or

8. any other grounds provided by an agreement between the employer and the employee.

The last point allows the parties to a labor agreement (contract) to include provisions regulating termination in addition to those already contained in the Labor Code. Regardless

of the provisions of a labor agreement (contract), an employer may not dismiss pregnant women and other specific categories of women, except in cases of liquidation of an enterprise, institution or organization.



In case of unilateral termination, Ukrainian law requires an employer to take certain steps to legally dismiss an employee, which can prove to be time-consuming. The reasons, and hence, the procedure for the dismissal itself, can vary from case to case. Still, it all begins with paragraph 2.3 of the Instruction "On the Procedure for Maintaining Labor Books," as confirmed by joint Decree No. 58 of the Ministry of Labor, the Ministry of Justice and the Ministry of Social Protection, dated July 29, 1993. This documents provides for so-called "dismissal notes," which describe the date and reason for dismissal to be entered into an employee's labor book with a reference to the provision of the law used as the ground for dismissal. Such dismissal notes must be inscribed using the terminology contained in relevant provisions of the labor laws.

Moreover, any employee subject to dismissal must be personally notified at least two (2) months prior to such dismissal. Such notice consists of "familiarizing" the employee with the order of dismissal, which the employee must personally sign and date. Moreover, Article 40 of the Labor Code allows the employers to uniletarally dismiss an employee only in the following cases:

1. changes in production and labor structure, including liquidation, restructuring or changing of the company profile accompanied by staff reduction;

2. inability of the employee to carry out his/her responsibilities due to insufficient qualifications or health-related reasons;

3. an employee's failure, on a regular basis, to perform his/her obligations as provided by the labor contract and the rules of internal procedure, in case such employee has previously been cited for disciplinary or civil penalties;

4. truancy, including absence from work without reason for more than three (3) hours during any business day;

5. absence from work for more than four (4) months consecutively due to the employee's temporary disability;

6. reinstatement of an employee who previously held the relevant position (i.e., such reinstated employee was on temporary leave for known reasons);

7. appearance at work under the influence of alcohol, narcotics or any other toxic substances; or

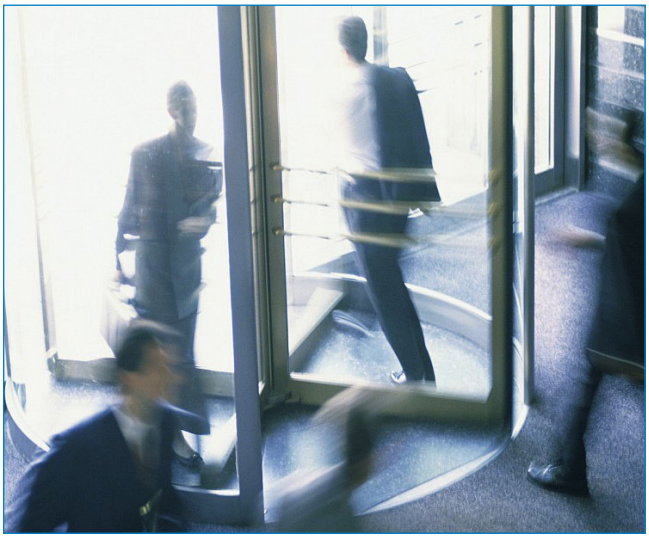
8. theft (including pilferage) of the employer's property as determined by a court of law or by resolution of the investigative body authorized to carry out administrative or civil penalties.

Note that employees may be terminated for reasons described in points (1), (2) or (6) only if they refuse to be transferred to other jobs. However, it is expressly prohibited to dismiss employees who are on vacation or temporarily disabled, except for cases provided in point (5) above. Importantly, these limitations do not apply in case of a company's liquidation.

Article 116 of the Ukrainian Labor Code provides that the dismissed employee must be paid any monies due to him or her by the employer on the day of dismissal. If the employee is absent from work on the final day, the above sum must be paid no later than the next day after the employee makes demand for payment. If the employer does not make timely payment, the employer must pay the employee's average salary for the entire time of the delay until final settlement is actually made.

According to Article 44 of the Labor Code, employees dismissed due to inability to carry out responsibilities, and in connection with the reinstatement of an employee who previously held the relevant position, must be paid a severance payment in an amount no less than the employee's average monthly salary. The term average monthly salary is used to protect individuals whose salaries vary from month to month over the course of a year. Therefore, if the salary is fixed, the average monthly salary will be equivalent to the employee's monthly salary.

In case a labor agreement is terminated due to military draft, recruitment or alternative service, an employee must be paid his or her average salary for 2 months. If a labor agreement is terminated because an owner or its authorized body violates labor legislation or a collective or labor agreement, the relevant employee must receive the severance pay required by a collective agreement, but no less than his or her average salary for 3 months.



Finally, terminations of pregnant women or single mothers with children up to 14 years of age are practically impossible to achieve without encountering serious legal problems. For instance, Article 184 of the Labor Code expressly prohibits dismissal of pregnant women and women with children up to three years of age, except in case of an employer's complete liquidation. Moreover, other women with children fall into a special category, granting them protection, including (a) single (unmarried) mothers with a child up to 14 years old, (b) mother with a child under three years old, and (c) pregnant women.

REDUNDANCY

In response to Ukraine's turbulent economic climate, many foreign companies find themselves in need of reducing their workforce. Understandably, some employees often do not wish to

leave voluntarily and may create problematic situations at the workplace. Although dismissing employees can become an emotionally charged undertaking, Ukrainian law provides a clear procedure for such terminations due to company downsizing.

In Ukraine, redundancy is permitted in case of changes in the production or labor organization of an enterprise, institution or organization, including mergers and acquisitions. Article 49-2 of the Labor Code provides that an employer must personally give an employee 2 months notice before such employee is made redundant. Simultaneousy with the notice, the employer must offer the employee alternative work in its enterprise, institution or organization. If no work is available at the employer's company, or if the employee refuses alternative work, the employee may independently seek assistance at the State Employment Center. At the same time, the employer must notify the State Employment Center upon making an employee redundant, indicating the employee's profession, field of specialty, qualifications and salary.

Note that Ukrainian legislation sets forth a priority list for dismissal of redundant employees. In accordance with Article 42 of the Labor Code, in case of staff reduction due to changes in the production and labor structure, the following persons will have preferential rights to continue their work with the employer

1) married persons who have two or more dependants;

2) persons whose families do not have other members with independent salaries;

3) employees with a long tenure of experience at the enterprise subject to production and labor re-organization;

4) employees who simultaneously work and study in higher or secondary scientific institutions;

5) military veterans, invalids of wars and individuals who are subject to the Law of Ukraine "On the Status of Veterans of War, Guarantees and Social Securities;"

6) authors of inventions, utility models, industrial designs and rational proposals;

7) employees from the enterprise who received work-related injuries or sicknesses;

8) persons deported from Ukraine within 5 years of the date of their return to their permanent residence in Ukraine;

9) employees, who have formerly served in the military or have served in other alternative (non-military) organizations, within two years from their completion of service; and

10) other individuals who have such rights in accordance with special legislation.

The ultimate factor in identifying who will continue working in the company after reducing the workforce, however, is the qualification (experience) of the employee. Therefore, the employer (owner) of an enterprise is entitled to make relevant substitutions within similar professions and positions. In other words, the employer may transfer a more qualified employee whose position has been cancelled, upon such employee's consent, to another lower position and at the same time dismiss the lesser qualified employee from that position.

If an employee's reason for dismissal is due to changes in the production and labor structure (redundancy), the employer must pay a severance payment in an amount no less than the employee's average monthly salary. In addition, according to Article 49 of the Labor Code, the employer should pay the dismissed employee's average monthly salary until the employee finds other work, but for no more than a period of three months.

SPECIAL CASE TERMINATIONS

Ukrainian labor legislation allows an employer to terminate a labor contract prior to the expiration date in the following "special" cases, such as one-time gross violations and crimes of moral turpitude by a director, deputy director, chief accountant and financial officers, including the following reasons:

1. if a director, deputy director or chief accountant of an enterprise, institution or organization (branch, representative office, division or other separate unit) fails to fulfill his/her labor obligations;

2. if the acts of a director of an enterprise, institution or organization leads to the untimely payment of salaries or the payment of salaries in an amount lower than the minimum monthly salary established by law;

3. if an employee who directly handles cash or a company's material assets commits an act, which provides grounds for distrust towards such employee on the part of the employer (owner); or

4. if an employee "performing educator functions" (i.e. instructors or teachers who work at the enterprise) commits an immoral indiscretion which is incompatible with the further performance of his/her functions;

5. if an employee is directly subordinate to a close relative in violation of the Law "Measures Against and Prevention of Corruption".

In the aforementioned cases, employment termination requires specific proof of gross violations or immoral acts. Such proof may be difficult to substantiate because of subjective opinions about moral values, loyalty towards the victim/perpetrator, etc. The above "special" cases rarely succeed in terminating employment, except in certain professions that require

a higher sense of moral behavior, such as teachers, instructors or trainers. In such cases, evidence of moral turpitude is easier to establish.

SEVERANCE PAYMENT

In the event the need arises to terminate an employee, a severance agreement can provide an employer with a sense of finality and protection from future litigation arising from potential claims a terminated employee may have. A comprehensive severance agreement can be a highly effective alternative to protracted litigation in claims involving wrongful termination or other employment related issues.

Typically, a severance agreement will include the payment of a lump sum of money, as well as possible benefits ranging from insurance payments to references. Importantly, it will also include releases from the terminated employee from any potential future claims the employee may have against the employer.

In certain cases of discmissal, Article 44 of the Ukrainian Labor Code requires an employer to pay the employee a one-time severance payment in an amount no less than such employee's average monthly salary. These cases include the following:

(i) refusal to continue work in connection with a change of essential labor conditions;

(ii) changes in labor and production organization, including liquidation, reorganization, bankruptcy or changes in the profile of the enterprise, institution or organization, and redundancy;

(iii) inability to carry out responsibilities due to low qualification or health reasons; and

(iv) the reinstatement of an employee who previously held the relevant position.

In the case of severance payment, "average monthly salary" is calculated proceeding from the total salaries paid during the last 2 months of the employee's actual work, plus additional payments such as bonuses, monetary incentives, etc., paid during this period. However, if the salary is fixed and no bonuses were paid, the average monthly salary will be equivalent to the employee's monthly salary.

In case a labor agreement is terminated due to military draft, recruitment or alternative service, an employee must be paid a severance payment in the amount of 2 average monthly salaries. If a labor agreement is terminated because an owner or its authorized body violates labor legislation or a collective or labor agreement, the relevant employee must receive a severance pay required by such collective agreement, but no less than his or her average salary for 3 months.

Please note that the legislation sets forth only the minimum requirements, and the employer and employee are free to agree upon a higher severance payment in a labor agreement.

EMPLOYMENT LITIGATION

Litigation may arise whenever an employee's or employer's constitutional rights or rights under the Labor Code are violated. The grounds for litigation are numerous, including discrimination of a citizen's equal right to employment, wrongful dismissal due to unfounded or illegal grounds, change in labor conditions, breach of labor agreement, etc.

Individual disputes are heard by either a labor dispute commission or a court of general jurisdiction (regional, district, city district, city courts, etc.). In almost all cases, a labor dispute commission has the competence at the lowest level to review a dispute. Decisions of a labor commission may be appealed to a court of general jurisdiction.

Article 232 of the Labor Code sets forth the cases when a court of general jurisdiction has jurisdiction at the lowest level over a labor dispute, including, but not limited to, the following cases:

(i) when no labor commission is appointed at an enterprise, institution or organization;

(ii) when a labor dispute is initiated by a director or chief accountant;

(iii) when a labor dispute is initiated by an owner and involves compensation of damages caused to the enterprise, organization or institution; etc.

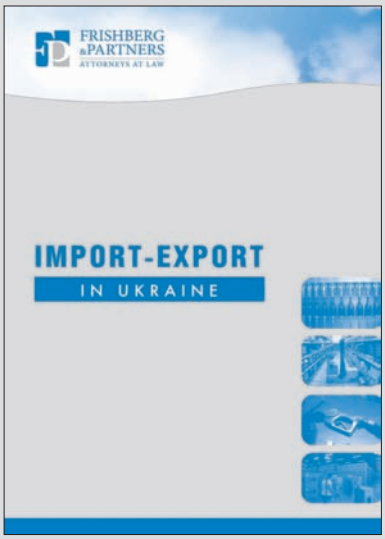
Courts of general jurisdiction will also consider disputes involving a refusal to hire certain categories of employees, for example, pregnant women.

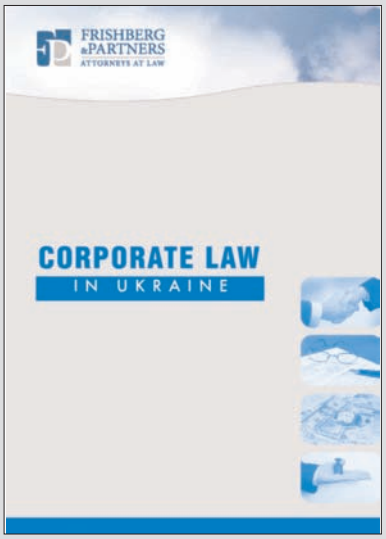
CONSEQUENCES OF WRONGFUL DISMISSAL

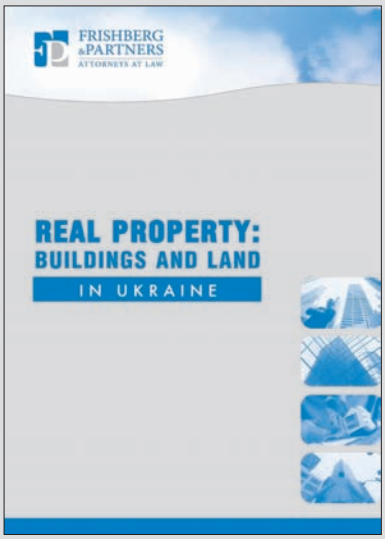
In case of wrongful dismissal, the only way for an employee, whose rights have been violated, to fight back is by initiating legal proceedings against the employer. Because of the lingering Soviet mentality, where all persons were guaranteed a right of unconditional employment, many Ukrainians cling to the illusion that they cannot be fired at will. As a result, many employees tend to submit their labor-related disputes to the regional or city courts of general jurisdiction, regardless of the existence of any justifiable labor disputes.

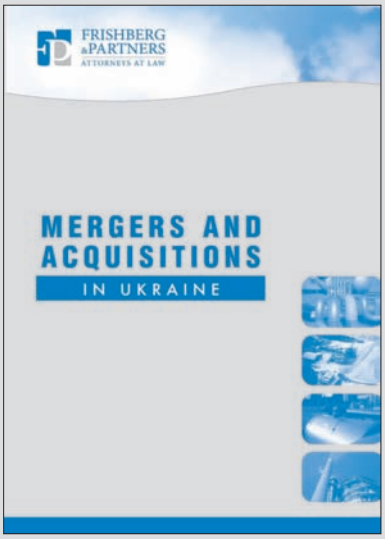
As in the Soviet system, the employee may file a lawsuit with the said courts within one month from the day he or she receives a copy of the dismissal order or the labor book. If no entry regarding dismissal appears in the labor book, then a law suit may be filed within 3 months of the day when the employee should have become aware of the violation of his rights. Should the employee fail to file a law suit within the above time frames due to substantiated reasons, such terms may be extended by the court.

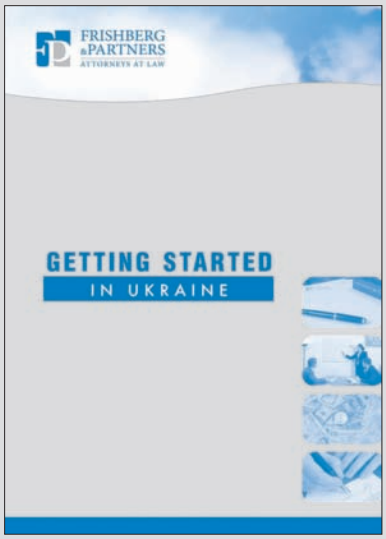
In the meantime, the employer/owner must pay the average salary of the employee for the entire period of involuntary truancy, but for no longer than one year. If the legal proceedings continue for over a year, however, then the court will order the employer to pay the average salary of the employee for the entire period of the employee's involuntary truancy without placing a limit on such period. In addition, the court may order the employer to pay the employee's average salary if inadequate reasons for the dismissal were entered into the employee's labor book that prevented the employee from finding gainful re-employment.

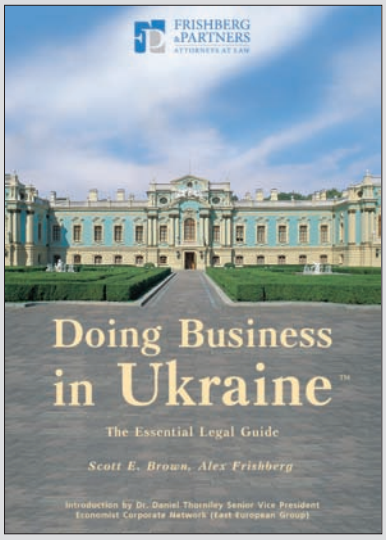












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