

MARTIAL LAW IN UKRAINE: COMPLIANCE FOR COMPANIES

2024 HANDBOOK



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Introduction

Russia's invasion of Ukraine necessitated the creation of an expanded area of Ukrainian legislation: martial law and its accompanying instructions. These new rules directly impact Ukrainian companies' labor regulations, setting forth detailed conscription requirements for full-time employees and possible reasons for exemptions from conscription, and require implementation of mandatory public safety guidelines, as well as imposition of the additional military tax of 1.5% on individuals' income.

In order to assist our clients in navigating the new legal requirements, we have prepared this extensive briefing paper. We hope you will find it useful. As Ukrainian legislation, especially martial law, can change quite frequently, we recommend verifying all information below with legal experts, as this briefing paper is for informational purposes only and should not be relied upon as legal advice.

Ukrainian Regulations on Employment and Conscription

1. An introduction to the Ukrainian's system of preparedness and regulatory framework for situations where national independence and security is endangered.

The system of preparedness and regulatory framework, when national independence and security is endangered, is generally governed by the Constitution of Ukraine, the Law of Ukraine No. 2496-VIII "On National Security", dated June 21, 2018, the Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law", dated May 12, 2015, and several legislative acts issued by the President and the Cabinet of Ministers, especially those issued during the current martial law period since February 24, 2022.

The Law "On National Security" establishes the foundations and principles of national security and defense, and the purposes and basic measures of state policy, which guarantees society and every citizen protection from threats to their quality of life (protection of constitutional rights and freedoms, safe living conditions, democratic society, territorial integrity, etc.). This Law also defines and delineates the powers of state authorities (military structures) in the sphere of national security and defense, while establishing the basis for the state authorities' integration policies and procedures in society.

The Law "On the Legal Regime of Martial Law" defines the legal regime of martial law (times of emergency or war), the procedure for its implementation and cancellation, the legal grounds for the actions of state authorities, military officials/administrations, and companies, institutions and organizations during martial law conditions. This Law also provides guarantees for human rights and freedoms and the legal interests of legal entities.

As a brief outline of martial law, martial law is implemented by initial proposal of the President of Ukraine to the National Security and Defense Council of Ukraine. Should the National Security

Council agree with the proposal, the President must issue a Decree on martial law (on a national level or for certain localities, as the case may be) and submit a draft law to the Cabinet of Ministers of Ukraine for review and urgent approval within a two-day period. If the decree and draft law are approved by the Cabinet of Ministers, a public announcement must be immediately published and the two documents will come into force on the date approved by the Cabinet of Ministers (usually immediately). The latest Presidential Decree in connection with aggression of the Russian Federation on the territory of Ukraine is entitled “On Implementation of Martial Law in Ukraine” from February 24, 2022” (No. 64/2022).

With regard to labor relations, socially useful works (community service) and other cooperation with the government, military commands/administrations and citizens during martial law, several legislative acts were issued, including (in no particular order of importance):

- 1) The Law of Ukraine No. 2136-IX “On Organization of Labor Relations during Martial Law”, dated March 15, 2022;
- 2) The Law of Ukraine No. 1702-IX “On the Foundations of National Resistance”, dated July 16, 2021;
- 3) Resolution of the Cabinet of Ministers No. 753 “On Approval of the Procedure of the Involvement of Legally Capable Persons in Socially Useful Works during Martial Law”, dated July 13, 2011;
- 4) Resolution of the Cabinet of Ministers No. 76 “On the Procedure of Reserving Conscripts According to the List of Conscripts during Martial Law”, dated January 27, 2023;
- 5) Resolution of the Cabinet of Ministers No. 1487 “On the Procedure of Organization and Maintenance of Military Records of Conscripts and Reservists”, dated December 30, 2022;
- 6) The Law of Ukraine No. 2664-IX “On Introduction of Amendments to Article 1 of the Law of Ukraine “On Military Duty and Military Service””, dated October 7, 2022 (in relation to including women with medical and pharmaceutical specialties into military records);
- 7) The Law of Ukraine No. 2232-XII “On Military Duty and Military Service”, dated March 25, 1992;
- 8) Decree of the Ministry of Defense No. 313 of October 11, 2021 (list of professions for which women may be included into military records);

- 9) The Law of Ukraine No. 3543-XII “On Mobilization Preparation and Mobilization”, dated October 21, 1993;
- 10) The Law of Ukraine No. 141-VIII “On Military and Civil Administration”, dated February 3, 2015;
- 11) The Law of Ukraine No. 3633-IX “On Amendments to Certain Legislative Acts of Ukraine on Certain Issues of Military Service, Mobilization and Military Registration”, dated April 11, 2024;
- 12) The Labor Code of Ukraine No. 322-VIII, dated December 10, 1971;
- 13) Letter of the Ministry of Economy of Ukraine No. 4804-06/49849-09 on labor obligation, dated July 18, 2022.

These regulations, in aggregate, govern civil and labor relations during martial law. As may be seen, Ukraine has had a regulatory framework in place for mobilization and martial law even before the current aggressions in Ukraine and prior to the 2014 conflicts, which ended in the questionable annexation of the Crimea. While many of these regulations originated prior to or just after Ukrainian independence, there have been and continue to be several changes during the current martial law status.

In terms of the Ukrainian government’s authorities during martial law, the Constitution of Ukraine and the Law “On National Security” set forth as follows:

- 1) The President of Ukraine, as the head of state, is the guarantor of state sovereignty, territorial integrity, and adherence to the Constitution (human rights and freedom). The president is the chief of the military forces of Ukraine and the head of the National Security and Defense Council. As such, he is responsible for ensuring state independency and national security, while generally reviewing, managing and implementing the decisions of the National Security and Defense Council;
- 2) The Parliament of Ukraine, amongst its other authorities, determines the principles of national and foreign policy, and national security. It is responsible for forming the legislative base in these spheres and approving decisions on the implementation of emergency and military conditions, including mobilization, while determining the general structure, numbers and functions of the armed forces of Ukraine and other military formations created pursuant to Ukrainian law;
- 3) The National Security and Defense Council of Ukraine coordinates and controls the state executive branch during martial law and emergency conditions for specific periods. In case national security crises arise, this body organizes the activity of the state executive authorities, reviews proposals to apply special economic and

other restrictive measures, and submits proposals to the president on the creation of strategic military bodies during certain periods;

- 4) The Cabinet of Ministers of Ukraine, as the highest executive power, ensures state sovereignty and economic independency of Ukraine. It is responsible for taking measures to protect the rights and freedoms of individuals and citizens and ensure defense capability, national security, public order and the fight against crimes;
- 5) The National Bank of Ukraine determines cash-credit (foreign currency) policy in the interests of national security;
- 6) The Ministry of Defense of Ukraine is responsible for forming and implementing state policy on national security issues within the spheres of the armed forces, national defense and military construction (both in times of peace and martial law). It organizes defense planning, determines principles for the military, military personnel and military-technical policies in the defense sphere, and coordinates the activity of state authorities related to national defense preparedness;
- 7) Ministries, the State Security Service and other executive bodies are responsible for securing the performance of tasks set forth by the Constitution, laws, presidential decrees and resolutions of the Cabinet of Ministers. These bodies are essential in implementing concepts and programs in the sphere of national security and supporting the country's state of preparedness to apply forces and means of national security;
- 8) Local state administrations and various other local authorities resolve national security issues on local levels;
- 9) The Armed Forces of Ukraine ensure defense and protection of state sovereignty, territorial integrity and inviolability. They are responsible for deterring and repelling armed aggression against Ukraine, protecting its airspace and territory, and participating in measures aimed at combating terrorism;
- 10) The Special State Service of Transport is responsible for the stable functioning of transportation during times of peace and special periods. For example, it installs and reconstructs barriers around transport objects to ensure the activity of the armed forces and other military formations and the safety of citizens during public transport;
- 11) The Ministry of Internal Affairs of Ukraine is responsible for protecting human rights and freedom, public interests, state interests, civil security, etc. This is essentially the police force on the territory of Ukraine, which can also be active in

state border protection (customs and immigration matters) and emergencies (floods, fires, rescues, etc.), among other matters;

- 12) The Court Protection Service is responsible for the protection and support of public order in judicial bodies and may also be involved in fighting crimes which may affect the national security of Ukraine;
- 13) The State Prosecutor's Office is also involved in the sphere of national security, especially in fighting corruption and crimes that may affect national security;
- 14) Citizens of Ukraine, on a voluntary basis, participate in elections, referendums and other forms of democratic events. They may also be elected to governmental positions. They are responsible for acting within the national interests and obligations set forth in the Constitution of Ukraine, whether on a voluntary or mandatory basis and/or whether individually or via associations.

In addition to the above-mentioned legislation, the Cabinet of Ministers and the President of Ukraine review and approve several strategies for long-term, mid-term and short-term national security. Long-term strategic papers include strategies on national security, military security, public security, civilian protection, development of the military industrial complex, cyber protection, etc. Mid-term and short-term strategies include strategies on security and defense component sector, compiling stocks for the military industrial complex, state defense capabilities, procurement of goods, works and services for defense purposes, etc.

In general, national security is aimed at the protection of individuals and citizens (life, dignity, constitutional rights, freedom, etc.), society (democratic, spiritual, moral, ethical, historical, intellectual and material valuables), the environment and natural resources, and the state (constitutional system, sovereignty, territorial integrity and inviolability).

2. Civilian-military cooperation, as well as regulatory mechanisms, which facilitate (or limit) such cooperation in times of war or other national emergencies.

The Law "On National Security" describes in more detail the roles of the President, the Cabinet of Ministers, the Parliament, local authorities, and citizens in the civilian sector (as summarized above or also known as "democratic civil control"). Democratic civil control is defined in the Law "On National Security" as the set of legal, organizational, informational, personnel and other measures taken under the Constitution and laws of Ukraine in order to ensure rule of law, legality, accountability, and transparency within the security and defense sector and other sectors related to the restriction of human rights and freedoms in cases defined by law, including the promotion of effective activity and performance of functions by state authorities in such sectors aimed at strengthening the national security of Ukraine.

In terms of civilian-military cooperation, Decree No. 64/2022 of the President of Ukraine “On Implementation of Martial Law in Ukraine”, dated February 24, 2022 states that martial law is temporarily in effect, and it may limit certain constitutional rights and freedoms set forth in the Constitution of Ukraine. In particular, with respect to inspection/search of domicile, privacy, freedom of movement within the territory of Ukraine, dissemination of information, peaceful assembly, deprivation/confiscation of property, right to strike and education, etc.

The Law “On the Legal Regime of Martial Law” provides further details on possible relations between the civil and military sectors. Article 8 of the said Law extensively lists the possible temporary limitations on constitutional rights that military commands with military administrations (if created) and local authorities may apply across Ukraine or in certain localities where martial law is in effect by presidential decree. These limitations also apply towards the rights and legal interests of legal entities. The limitations include:

- 1) the establishment (strengthening) of the protection of critical infrastructure facilities and vitally important public facilities, and the introduction of special administration for their operation;
- 2) the introduction of labor obligations for legally capable individuals not involved in the defense and protection of critical infrastructure facilities and not specifically reserved for enterprises, institutions and organizations for the period of martial law. Such individuals can be called for performing works of a defensive nature, as well as liquidation of the consequences of emergency conditions, which may arise or arose during martial law. They may also be called for socially useful works, which are performed to meet the needs of the Armed Forces of Ukraine, other military formations, law enforcement agencies and civil defense forces during martial law to ensure the functioning of the national economy and the protection of critical infrastructure. Such individuals do not, as a rule, require special professional training. For employees involved in the performance of socially useful works, their place of work (position) must be maintained over the performance of such works;
- 3) the use of the labor capacity and resources of enterprises, institutions and organizations of all forms of ownership for defense needs. Importantly, this permits a change of an individual’s work regime and production/labor activity, including a change of working conditions under Ukrainian labor legislation;
- 4) the forced alienation of property under private or communal ownership and seizure of property of state enterprises and state commercial associations for the needs of the state during martial law in accordance with the procedure established by law, provided that confirming documents are issued in this regard;
- 5) the implementation of curfews and blackouts (e.g., limitations on electricity supply);

- 6) the establishment of special entrance/exit rules into/from the country, and limitations on the movement of citizens, foreigners and stateless persons, as well as transportation means;
- 7) the ability to examine individuals' documents and, if necessary, inspect personal items, transportation means, baggage and cargo, work premises and citizens' domiciles, unless strictly prohibited by the Constitution of Ukraine;
- 8) the prohibition of peaceful rallies, meetings, marches, demonstrations, and other mass events;
- 9) the banning of political parties' and public associations' activities if they are aimed at eliminating the independence of Ukraine, changing constitutional order by violent means, violating the sovereignty and territorial integrity of the state, undermining its security, and illegally seizing state authorities. This is also related to parties/associations that express war propaganda, violence, incitement of inter-ethnic, racial and religious enmity or that encroach upon the stability of critical infrastructure facilities, human rights and freedoms, and health of the population;
- 10) the prohibition or restriction of choice of sojourn or residency on territories under martial law;
- 11) the regulation of (i) providers of electronic communication networks and/or services, printing enterprises, publishing houses, television and radio organizations, television and radio centers and other mass media and cultural enterprises, institutions, organizations and (ii) the use of local radio stations, television centers and printing houses for military needs and carrying out educational work amongst troops and the population. This also enables the prohibition of operations involving the receiving and transmission of radio stations for personal and collective use and the transmission of information through computer networks;
- 12) the confiscation of communication equipment, television, video and audio equipment, computers and other communication means in case of violations or non-performance of martial law requirements by companies, institutions, organizations and citizens;
- 13) the prohibition of the sale of weapons, powerful chemical and poisonous substances, alcoholic beverages, and soft alcoholic beverages;
- 14) the establishment of a special production and sales regime for medicines with narcotics, psychotropic substances, etc.;

- 15) the confiscation of educational and military equipment, explosives, radioactive substances/materials and powerful chemical and poisonous substances from enterprises, institutions and organizations;
- 16) the reduction of stocks of hazardous chemicals, explosive and other hazardous substances at high-risk facilities;
- 17) the establishment of military housing obligations for individuals and legal entities to accommodate military personnel, members of law enforcement agencies, the personnel of civil protection services, evacuated individuals, and military units and institutions pursuant to the procedure established by the Cabinet of Ministers of Ukraine;
- 18) the establishment of the procedure for using civil protection structures of all forms of ownership and departmental affiliation, which should include requirements for bringing buildings, structures or their separate parts into compliance/readiness for their intended use in accordance with the requirements established by law for the maintenance and operation of objects within civil protection spheres. This entails ensuring round-the-clock unimpeded access to such objects for the population, and organizing shelter within, if possible (availability of free places, possibility of access by unauthorized persons), informing the public about such objects in a form also accessible to persons with visual and hearing impairments, etc.;
- 18(1) the organization of the construction of civil protection structures, dual-purpose structures and the manufacture (installation) of primary (mobile) and arrangement of simple shelters, as well as (if necessary) the restoration of damaged (destroyed) civil protection objects;
- 18(2) marking buildings, structures, vehicles, etc. subject to international humanitarian law with appropriate distinctive signs (emblems);
- 19) the evacuation of the population in emergency situations and from conflict zones;
- 19(1) the evacuation of material and cultural property owned by the state in case of a threat of damage or destruction in accordance with the list approved by the Cabinet of Ministers of Ukraine;
- 20) the introduction of basic food and non-food provisions for the population, if necessary;
- 21) the implementation of additional measures to protect state secrets;

- 22) the internment (forced resettlement) of foreigners, who pose a threat of attacks or aggression against Ukraine;
- 23) the forced evacuation of detained persons (those in temporary detention centers, suspects and accused individuals of crimes, individuals under arrest or in jails close to military hostilities, etc.).

In addition, the Law of Ukraine No. 141-VIII “On Military and Civil Administration”, dated February 3, 2015, was passed as a consequence of the Russian Federation’s aggression against Ukraine in 2014 and still remains in full force and effect. This Law initially established the organization, authorities and procedure of civil and military administration, which were created as temporarily necessary measures with elements of military management to ensure the safety and stabilization of civilians in regions where Russian military aggression is being repelled (specifically noted as “anti-terrorism operations”). This Law is mostly targeted for temporarily occupied territories (Donetsk, Lugansk, the Crimea, etc.), but still applies to other territories under Russian aggression.

Military-civil administrations can be set up for districts, regions or town-specific cases whereby the military-civil administration temporarily takes upon itself the authorities and functions of local authorities and councils on a temporary basis. Such administrations are state bodies in the form of legal entities under public law empowered to act independently while retaining liability set forth by general law. Military-civil administrations are governed by the Constitution of Ukraine and the Law “On the Fight Against Corruption”, and are created on the basis of presidential decrees/decisions and various procedural/budgetary documents under the control of the Parliament.

According to point 4 of the Resolution of the Cabinet of Ministers “On Approval of the Procedure of the Involvement of Legally Capable Persons in Socially Useful Works during Martial Law”, military-civil administrations together with military command authorities can issue decisions on labor duty and the need to employ able-bodied persons for performing socially useful works. Such decisions must be published in the mass media and include (i) substantiation for the need to employ individuals, (ii) the list and number of groups (brigades, squads) of such individuals, (iii) the types of required work, (iv) the relevant territory and transport details, and other details (group leaders, meeting spots, work details, etc.).

As for civilian-military cooperation and regulatory mechanisms, which facilitate (or limit) such cooperation in times of other national emergencies, these issues are governed by the Civil Protection Code of Ukraine, the Law of Ukraine No. 1550-III “On the Legal Regime of States of Emergency” (see section 8 below), and Resolution No. 368 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure of Classification of States of Emergency and their Levels”, dated March 24, 2004. We briefly describe the definition of “state of emergency” in section 8 below. However, the Civil Protection Code also includes such force majeure circumstances as catastrophes, accidents, fires, natural disasters, epidemics, epizootics, use of means mass

destruction or other dangerous events (including those which impede economic activity in specific localities).

In the event of an emergency, the authorities work in a heightened mode to overcome the emergency situation, organizing regular informational outputs to civilians about events related to the situation in an attempt to localize the problem, help victims, and, if necessary, evacuate residents. Direct intervention of the state in the management of private companies or restriction of the rights and freedoms of civilians is not initially implemented. However, if avoidance of the emergency is difficult or impossible, the state has the right to directly manage both state-owned and private companies with significant limitations to the rights and freedoms of individuals. Measures such as curfews, restrictions on freedom of movement, repurposing of private companies, and forced alienation or confiscation of property may be introduced.

Similar to martial law, states of emergency are initiated by presidential decree with subsequent approval by the Parliament of Ukraine within a two-day period. Certain limitations on constitutional rights and freedoms, as described in section 8 below, may be introduced in times of emergency.

In severe emergency situations, targeted mobilization may be carried out during peacetime and, in exceptional cases related to the need to carry out urgent emergency rescue works, the temporary transfer, on a voluntary basis, of able-bodied persons or use of civilian vehicles to perform the specified works may be permitted by chief of emergency and rescue works with adherence to labor safety conditions.

From a practical point of view, our firm's clients have not yet encountered any situations in various regions of Ukraine with the state authorities when the state authorities strictly demand limitation of most of the rights and freedoms described above. Generally, individuals and Ukrainian legal entities cooperate with the military on a voluntary basis. There have been several cases in the news, however, citing application of such limitations (confiscation of automobiles, property, premises, etc.). These situations are commonly connected with gross violations of martial law rules by individuals and/or legal entities.

In interaction with the civilian sector, the government of Ukraine (in particular, the Center for Strategic Communication and Informational Safety under the Ministry of Culture and Information Policy) issued guidelines in Ukrainian, informing citizens and individuals on how to act/ behave during states of emergency or war (please see <https://www.mil.gov.ua/content/pdf/NS-WAR.pdf>.)

On April 11, 2024, the Law of Ukraine No. 3633-IX “On Amendments to Certain Legislative Acts of Ukraine on Certain Issues of Military Service, Mobilization and Military Registration” was adopted, which introduced changes to the following laws: the Administrative Procedural Code of Ukraine, the Law of Ukraine “On Social and Legal Protection of Persons Liable for Military Service and Members of Their Families” (No. 2011-XII, dated 20.12.1991), the Law of Ukraine “On Local State Administrations” (No. 586-XIV, dated 09.04.1999), the Law of Ukraine “On

Mobilization Preparation and Mobilization” (No. 3543-XII, dated 21.10.1993), the Law of Ukraine “On Military Duty and Military Service” (No. 2232-XII, dated 25.03.1992), the Law of Ukraine “On Military and Civil Administration” (No. 141-VIII, dated 3.02.2015), the Law of Ukraine “On the Legal Regime of Martial Law” (No. 389-VIII, dated 12.05.2015) and several other Laws.

This recently adopted Law No. 3633-IX provides for changes in the mobilization processes, punishment for evaders, basic military service, the right to deferment, and introduces new responsibilities for persons liable for military service with new motivational norms.

3. Constitutional and international obligations affecting civil conscription and the duty to work under all circumstances.

Pursuant to effective legislation, the constitutional rights and freedoms of citizens may be limited during martial law. The main right is the right of individuals to peaceful living conditions, which is guaranteed by the Constitution of Ukraine and international legal documents. No individual may be deprived of the right to such living conditions. Under martial law, the following rights may also not be violated:

- the right to equality and respect for human dignity;
- the right to personal inviolability;
- the right to marry;
- the right to citizenship;
- the right to fair trial, legal assistance and legal protection;
- the right to housing/accommodation.

As mentioned in section 2 above, certain constitutional rights and freedoms set forth in the Constitution of Ukraine (in particular, with respect to inspection/search of domicile, privacy, freedom of movement within the territory of Ukraine, dissemination of information, peaceful assembly, deprivation/confiscation of property, right to strike and education, etc.) may be limited. Please also refer to our summary of Article 8 of the Law “On the Legal Regime of Martial Law” above in section 2.

The military command (leadership) may limit the rights of individuals to free movement on the territory of Ukraine. This can include set curfew hours, prohibitions or limitations on free choice of residence, and special regimes for entering or exiting certain populated areas, etc.

Individuals may also be deprived of their right to certain property during martial law. The forced alienation (confiscation) of property is permitted pursuant to specific procedures provided that the individual/entity deprived of property is later compensated. Martial law also allows certain interference in the private life of individuals, such as control over communication means and inspection of belongings, documents and residences. During martial law, elections, referendums, mass gatherings and protests are prohibited, which limits the rights of citizens to participate in the administration of state matters.

Martial law may also limit individuals' right to free choice of work, as citizens during war may be enlisted to perform socially useful works (community service). The introduction of compulsory labor is also regulated by law. Compulsory labor (labor duty) involves the performance of works of a defensive nature, as well as the removal of emergency situations of a man-made, natural or military nature and their consequences. Note, however, that the duration of the performance of such works and compensation is established by the labor legislation of Ukraine.

Underage children, children between the ages of 14 and 15, women with children under 3 years of age and pregnant women cannot be enlisted for socially useful work in any circumstances when the performance of such work may negatively affect their health. Socially useful works (community service) may also not be performed in unprotected localities/areas.

As to international legal documents, forced enlistment for socially useful works may not be applied to foreigners. Pursuant to the various Geneva and Hague Conventions on customs and rules of warfare, prisoners of war may not be engaged in socially useful works (community service).

During times of martial law, the following temporary limitations on the rights and legal interests of legal entities may be implemented:

- 1) the use of work capacity and labor resources of enterprises, institutions and organizations of all ownership forms for defense needs, a change in their working regime and other production activity, and a change of work conditions in accordance with the labor legislation of Ukraine;
- 2) the issuance of orders, decrees and instructions on the suspension of executive officers of enterprises, institutions and organizations without pay for the improper performance of obligations set forth by law (the Law "On the Legal Regime of Martial Law") and orders on the appointment of temporary acting executive officers for the duration of martial law;
- 3) in case of violation of the requirements or non-fulfillment of measures of martial law, the confiscation of electronic communication equipment, television, video and audio equipment, computers, and other technical means of communication from enterprises, institutions and organizations of all ownership forms and certain individuals;
- 4) the forced alienation (sale) of property, including property under private or communal ownership, and the confiscation of property from state enterprises and state business associations for state needs during martial law according to the procedure provided by law with the issuance of confirming documents.

During martial law, authorized state bodies have the right to regulate the work of electronic communication network providers and/or services, printing enterprises, publishing houses, television and radio organizations, television and radio stations and other entities, including culture and mass media institutions. The said authorities may also prohibit the transmission of information via computer networks. In localities where military actions are being conducted, these measures are taken directly by the military command structure and military administrations.

4. Areas and functions for which a system of civil conscription or mandatory civil labor duty has been established and how such requirements have been formulated.

According to the procedure of the involvement of legally capable persons in socially useful works during martial law, the types (list) of socially useful works (community service) are determined by the military command or military administrations together with the local authorities. The annex to the aforementioned procedure provides the following sample list of socially useful works performed in various social spheres:

- 1) repair and reconstruction works and preliminary works on socially vital objects;
- 2) clearing of rubble, railroad tracks and roads/highways;
- 3) construction of protective structures for civilians, and the creation of simple shelters and other special purpose engineering structures;
- 4) repair and construction of residential premises;
- 5) support and maintenance works on protective structures for civilians, and adapting existing above-ground and underground premises for simple shelters;
- 6) loading and unloading works at railways, ports, etc.;
- 7) agricultural works (field works, harvesting, hay cutting, etc.);
- 8) public assistance, primarily to disabled individuals, children, senior citizens, ill individuals and other individuals who do not have the ability to independently counteract adverse factors;
- 9) organization of support for citizens affected by military actions;
- 10) works to support the stable functioning of high-security facilities in case of emergencies;
- 11) support works connected with public order;

- 12) restoration works on coastal strips, natural springs and reservoirs, riverbeds, strengthening of dams and bridge structures, etc.;
- 13) harvesting of firewood for heating season;
- 14) waste management works.

The above list is not exhaustive and other types of work may be introduced depending on the needs of specific regions and localities and the intensity of the emergency.

Legally capable (able-bodied) individuals may be enlisted for socially useful works, including individuals, who are not subject to military conscription and, due to age and health conditions, are not restricted from working during martial law. Exceptions also include individuals working in the defense sphere and in the sphere of ensuring the livelihood of the population and those reserved for enterprises during martial law for the purpose of performing works that have a defense character, as well as persons involved in the implementation of measures of national resistance. Individuals not restricted from working during martial law may include:

- registered unemployed individuals and other unoccupied individuals, including internally displaced persons;
- employees of enterprises operating during martial law (in agreement with their chief officers), which are not involved in the implementation of mobilization tasks (orders) and are not included in the composition of civil defense formations;
- individuals employed by private farming enterprises;
- students of higher educational institutions and vocational/technical education institutions;
- self-employed individuals.

The military command is responsible for notifying, selecting and staffing groups of eligible individuals for socially useful works (community service) with the assistance of local leaders and enterprise heads, including housing enterprises, education institutions, etc. The military command may take the following measures to organize the enlistment of individuals for socially useful works:

- 1) registration (recording) of individuals enlisted for community service and their orientation (instructions on safety measures);
- 2) providing such individuals with personal means of protection and operating instruments;
- 3) planning and recording of the volume of production, performance of works and provision of services.

The performance of socially beneficial works in radioactively or chemically contaminated territories, in areas of dangerous infectious diseases and around explosive objects is only permitted with the written consent of the individual who has expressed a desire to be involved in their performance. As mentioned above, socially useful works may not be carried out in unprotected localities. Please see section 5 below for a summary of the rules for reserving military service-eligible individuals from mobilization during martial law.

5. Reservation of employees/individuals - Exceptions of a general nature (like age, health, pregnancy etc.) or other forms of exemptions and the system for compensation and schemes for injuries incurred.

As mentioned above, underage children, children between the ages of 14 and 15, women with children under 3 years of age and pregnant women cannot be enlisted for socially useful work in any circumstances when the performance of such work may negatively affect their health. Socially useful works (community service) may also not be performed in unprotected localities/areas (protected by military or against radiation or chemical pollution, endangered by explosives, etc.) without the written consent of the individual.

Compensation for socially useful works is governed by the procedure of the involvement of legally capable persons in socially useful works during martial law on the basis of labor protection legislation and the social insurance system. A fixed-term labor agreement should be concluded with each individual and their prior place of work (position) must be retained until return from such works.

Employees of entities operating under martial law are paid for the performance of their socially useful work on par with the terms of payment established for their profession (position), and the amount of such payment may not be lower than the average salary of their principal workplace. Other individuals are paid for socially useful works in amounts commonly established for their profession (position) across Ukraine. However, the amount of such payment should not be lower than the amount of the minimum wage per month or hourly as established by the Law of Ukraine “On the Organization of Labor Relations under Martial Law”.

Compensation for socially useful works is paid at the expense of the ordering customer’s funds or the funds of local state administrations or charitable contributions or donations, or other sources not prohibited by law. Works undertaken by registered unemployed individuals are carried out at the expense of the state social insurance unemployment fund, unless otherwise provided by law.

The financing of socially useful works is taken from targeted funds for covering minimum salary payments (the Law “On Organization of Labor Relations during Martial Law”), mandatory social insurance contributions for temporarily unemployed individuals for the fixed term of the labor agreement, the first five days of temporary disability (if applicable) from the employer, and payment of travel expenses to/from the place of labor. For injuries incurred by individuals during the performance of community service, state social insurance guarantees provided by labor

legislation, the Law “On Employment of the Population” and the mandatory social insurance funds are applicable.

As these individuals work on the basis of a fixed-term employment contract and with payment of contributions to the social insurance funds, such persons have the right to social support in case of total or partial loss of labor capacity on general grounds. This right is guaranteed, in particular, by mandatory state social insurance at the expense of social insurance contributions of citizens, enterprises, institutions and organizations from all spheres of the economy, as well as budgetary and other sources of social security.

On June 5, 2024, the Cabinet of Ministers of Ukraine adopted amendments to its Resolution No. 76, which establishes the procedure for reservation of individuals, who are due for military service during martial law in Ukraine (hereinafter – the “Procedure”). The said Resolution updated the previous procedure of reservation.

According to the Procedure, individuals, who may be reserved from military service, should be officially hired employees and obligated to serve the military. For example, a man, who is excluded from the military registration due to unfitness, cannot be considered as an individual bound to military service.

The Procedure also establishes a list of enterprises, which have the right to reserve their employees. Enterprises, institutions and organizations, which are of critical importance to the economy and livelihood of the population, are included into the said list. In addition, the Resolution refers to the procedure and criteria for determining enterprises, institutions and organizations, which are critically important to the economy and livelihood of the population in special periods (e.g., martial law, pandemics, natural disasters, etc.).

According to the procedure/criteria, enterprises critically important for the functioning of the economy and ensuring the livelihood of the population in special periods include: specialized UN agencies, international judicial bodies, international and non-governmental organizations and institutions of which Ukraine is a member, participant or observer, in accordance with the international treaties concluded by Ukraine, foreign diplomatic agencies in Ukraine, representative offices of donor agencies, executors of international technical assistance projects, representative offices of international organizations, The Red Cross Society in Ukraine, international and Ukrainian non-governmental organizations that implement humanitarian projects at the expense of international partners pursuant to the list approved by the Ministry of Foreign Affairs or the Secretariat of the Cabinet of Ministers of Ukraine.

According to points 8 and 9 of the Procedure of reservation of individuals liable for military service during martial law in Ukraine, as mentioned in the Resolution, the relevant applicant should submit to the Secretariat of the Cabinet of Ministers of Ukraine, the relevant Ministry of Ukraine or the relevant central body of the executive power the following documents in paper or electronic form:

- 1) a list of employees, for whom reservation from mobilization is requested, which should be executed pursuant to the form established in Annex 1 to the Procedure;
- 2) a letter of justification;
- 3) a certificate on the total number of employees liable for military service on the applicant's staff payroll executed in accordance with Annex 2 to the Procedure.

The letter of justification should contain the following: (i) reference to the Decision of the specific Ministry of Ukraine, the Secretariat of the Cabinet of Ministers of Ukraine or the relevant central body of the executive power concerning the recognition of the enterprise, institution and organization as critically important and (ii) information on the correspondence of the registration data of employees specified in the list with their military registration documents.

Please note that employees of critically important enterprises, institutions and organizations, which are mentioned in the list approved by the Ministry of Defense of Ukraine, are subject to reservation regardless of military rank, age and military specialization. In addition, there are limitations on the number of employees, which may be reserved from mobilization and which should be no more than 50 percent of the number of employees liable for military service in such enterprise, institution, organization. The said limitations do not apply to:

- (i) enterprises in the fuel and energy complex,
- (ii) enterprises that service life support systems,
- (iii) technical employees included by the order of the head of the enterprise in emergency repair teams of enterprises that ensure the operation of electronic communication networks during blackouts;
- (iv) enterprises that ensure the function of technical administrator of the Unified State Web Portal of Electronic Services, a fund that provides financial support (grants) to ensure the development of innovations and technologies for defense needs;
- (v) enterprises engaged in the construction of fortifications, the list of which is approved by the regional military administrations in coordination with the Ministry of Defense;
- (vi) enterprises identified by the Ministry of Strategic Industry as critical for the functioning of the economy in a special period or in the field of the defense industry;
- (vii) specialized UN agencies, foreign diplomatic missions in Ukraine, foreign diplomatic missions of Ukraine, and representative offices of international organizations that are critical to the functioning of the economy and the livelihoods of the population during special periods;

- (viii) representative offices of donor agencies and implementers of international technical assistance projects that are critical to the functioning of the economy and the livelihood of the population during special periods;
- (ix) The Red Cross Society of Ukraine and other Ukrainian non-governmental organizations implementing humanitarian projects funded by international partners that are critical for the functioning of the economy and ensuring the livelihood of the population during special periods (a list is approved by the Ministry of Reintegration);
- (x) specialized agencies of the United Nations, international judicial bodies, international and non-governmental organizations and institutions of which Ukraine is a member, participant or observer, in accordance with the international treaties concluded by Ukraine;
- (xi) institutions and organizations that include regular national teams of Olympic, non-Olympic sports and sports involving persons with disabilities (list is approved by the Ministry of Youth and Sports).

Upon obtaining the required set of documents, the relevant Ministry of Ukraine, the Secretariat of the Cabinet of Ministers of Ukraine or the relevant central body of the executive power in the corresponding sphere conducts a check of the completeness of the employee list, availability of the justification provided for it, and compliance with the requirements regarding the number of employees subject to reservation (if applicable), and submits information for approval of the Ministry of Defense of Ukraine.

After a positive decision has been taken by the Ministry of Defense of Ukraine, the Ministry of Economy performs its own check of the documents and issues an order on the reservation of the employees of the applicant. It then informs the applicant as well as the Ministry of Defense of Ukraine about its approval. The specific term of reservation from mobilization is mentioned in the order of the Ministry of Economy and cannot exceed 12 months for employees of critically important enterprises, institutions or organizations.

The order of the Ministry of Economy on reservation of employees is provided to the employer-applicant. In its turn, the employer is obliged to provide the employee under reservation with an Extract from the order of the Ministry of Economy in accordance with the form established in Annex 3 to the Procedure. Such Extract should be signed by the director/head of the employing organization and certified by its stamp (if any). A duly executed Extract is the document, which confirms an employee's reservation from mobilization if questioned by local authorities/checkpoints.

The said Extract should be given to the relevant employee for his signature, which must also be placed in a specific register on issuance of military blanks. Such register should be drawn up in accordance with the form established in Annex 4 to the Procedure.

Furthermore, the employer is obliged to submit a specific notification on reservation of the employee, prepared in accordance with Annex 5 to Procedure, to the territorial recruitment and social support center where the employee is on military registration (hereinafter – the “Territorial Military Center”) so that such employee is recognized for special military registration. Such notification should be sent to the Territorial Military Center within five days from the date of providing the Extract to the employee. The relevant Territorial Military Center enters information on the employee into the Unified state register of conscripts, persons liable for military service and reservists.

The employer is obliged to prepare quarterly reports on the number of its reserved employees, as of the 1st day of the month following the reporting quarter. Such report is prepared under the form established in Annex 6 to Procedure and submitted to the relevant Ministry of Ukraine, the Secretariat of the Cabinet of Ministers of Ukraine or the central body of executive power by the 10th day of the month following the reporting quarter.

Cancellation of the provided reservation occurs in the event of the expiration of its validity period, the loss of status by the enterprise/organization that gave reason for the reservation of employees, the liquidation of the enterprise/organization, or dismissal of the employee.

Please see below a brief summary of the procedure for applying for employees’ reservation to the relevant authority:

- 1) The applicant for employee reservation should choose the proper authority for submission of its request for reservation – the relevant Ministry of Ukraine, the Secretariat of the Cabinet of Ministers of Ukraine or the relevant central body of the executive power;
- 2) The applicant should prepare the required set of documents described above;
- 3) The applicant should submit such documents to the relevant authority;
- 4) The Ministry of Economy will issue the relevant order on reservation of employees;
- 5) The applicant should issue to each employee under reservation a separate Extract from the said order of the Ministry of Economy under the form established in the Procedure;
- 6) The applicant should notify the relevant Territorial Military Center concerning each employee’s reservation within 5 days from the day of providing the Extract from the order to an employee;

- 7) The applicant should submit a report concerning the number of reserved employees to the corresponding authority on a quarterly basis.

6. Regulatory relationship between civil conscription and regulations on labor matters such as resignation, leave of absence, etc.

The rules governing labor relations in Ukraine during martial law are set forth in the Law of Ukraine No. 2136-IX “On Organization of Labor Relations During Martial Law”, dated March 15, 2022 (as lastly amended on November 22, 2023) and the procedure of the involvement of legally capable persons in socially useful works during martial law. These regulations applies to all local companies, foreign representative offices and private entrepreneurs that use hired labor and individuals hired for contractual labor.

During martial law, employers and employees are able to agree upon the form of their labor agreements. Trial periods may be set for any category of employees as opposed to the limits set forth in the Labor Code of Ukraine (e.g., no trial period for employees under 18, students fresh out of university or graduate school, disabled persons, pregnant women, single mothers, etc.). However, such fixed-term labor agreements should provide for the term, salary, vacation, dismissal, etc. For employees involved in the performance of socially useful works, their current place of work (position) is maintained during the performance of social works.

Many companies are currently facing work stoppages or difficulties in hiring new employees in order to stabilize the workforce. Otherwise, employees have departed the country with their families for safety reasons. Therefore, the Law provides that an employer may hire new employees under temporary “fixed-term” agreements for the “duration of martial law” or for unspecified periods to replace temporarily displaced employees (i.e., until the temporarily displaced employee returns). Under normal conditions, fixed-term agreements would need to have specific commencement and end dates regardless of the duration of specific conditions.

Martial law provides an employee with the right to request unpaid leave for an unlimited term for the duration martial law. Specifically, Sections 3 and 4 of Article 12 of the Law establish the following two grounds for providing unpaid leaves to employees during martial law:

- 1) unpaid leave without limitation of its term (however, such leaves are only applicable during the effectiveness of martial law);
- 2) unpaid leave for employees, who left Ukraine or obtained the status of an internally displaced individual.

As for the first leave, an employer may grant such leave upon an employee’s request without limitation of its term during martial law. Such leave is provided by the employer at its own discretion, meaning that it is not mandatory for the employer to grant such leave to the employee. This type of leave may be granted to any employee at his/her request and only upon the employer’s

consent. In this case, the time spent on unpaid leave is not included in the employee's length of service, which grants the right of an employee to annual basic leave.

Concerning the second leave, Section 4 of Article 12 of the Law establishes that during martial law an employer is obliged to provide unpaid leave to an employee, who left Ukraine or acquired the status of internally displaced person based on the employee's application for the duration mentioned in the said application, but for no more than 90 calendar days. Thus, displaced Ukrainian employees living abroad during martial law may request unpaid leave for a term of up to 90 calendar days. In this case, the time spent on unpaid leave is not included in the employee's length of service for purposes of calculating annual basic leave.

In brief, the second leave is mandatory for granting to displaced Ukrainian employees living abroad upon their request and is limited by 90 calendar days. In addition to the application, an employee is obliged to provide documents confirming that such employee is actually located outside of Ukraine.

Both leaves are granted to employees based on the employer's Internal Order. Early termination of both leaves may take place in case of cancellation of martial law in Ukraine or on the basis of an employee's written application. Please note, however, that the Law does not provide the opportunity for the parties to agree upon such kind of unpaid leave by using a specific term, as it is simply limited by "duration of martial law".

If an employer agrees to grant unpaid leave, then an employee needs to provide a written application in order for the employer to issue the required internal labor order. With regard to early termination of employees' unpaid leaves (prior to cancellation of martial law), the employer may request and affix in the Internal Order that such employees will need to inform the employer about their return to work one month prior to the intended return. Employees need to be familiarized with such Internal Order by way of putting their signatures on it.

With respect to the possibility to substitute crucial employees, who are abroad, with new employees, during the martial law it is permissible to conclude with new employees fixed-term employment agreements for the period of absence of the main employee (Section 2 of point 2 of Article 2 of the Law). In this case, it is necessary to inform the candidates during interviews that they will only be temporarily hired for their positions, which are being reserved for the main employees until their actual return to work.

Regarding resignation, during martial law an employee may request the term for resignation. Under normal circumstances, the employee would need to give two weeks' notice to inform the employer about resignation. However, due to the current situation (in connection with military actions in areas where the employer is located and the existence of a threat to the life and health of employees), employees may request immediate resignation with payment of all work-related payments due on the date of dismissal.

The current rules provide that an employer has the right to transfer an employee for other work not set forth in his/her employment agreement without consent, unless such work is located in threatened territories and only with the purpose to assist with alleviating and clearing the consequences of past military actions or in circumstances that are or may become a threat to civilians. The employer is still obliged to abide by the terms of employment - i.e., no less than the minimum established wage and, if feasible, the current salary of the employee.

If the employer needs to change essential work conditions and salaries due to martial law, then due notification should be sent to employees prior to such changes. When employees are enlisted to perform socially useful works (community service), the employer does not have the right to terminate employment relations at its own initiative.

The regular workday should not last for longer than 60 hours per week for employees employed at critical infrastructure facilities, and the duration of weekly uninterrupted leave/rest can currently be reduced to 24 hours. Moreover, during the period of martial law some requirements of the Labor Code are not applied. For example, it is currently possible to ask employees to work on weekends and to not reduce working hours by one hour on the eve of weekends, holidays and non-working days. There are no limits on overtime work during martial law; thus if a holiday coincides with a day off, the day off is not postponed, employees may be asked to work on holidays without reduction of work hours at night.

Regular annual vacations apply towards employees hired for socially useful works at the discretion of the employer in proportion to actual work hours. During the period of martial law, an employee's annual basic leave may be limited to 24 calendar days for the current working year by the employer's decision. If the duration of an employee's annual basic leave is more than 24 calendar days, the days of such leave not used during the period of martial law shall be postponed to the period after the termination or cancellation of martial law. At the employer's decision, unused days of such leave may be granted without pay.

During the period of martial law, an employee may be granted any type of leave (except for maternity leave, leave to care for a child under the age of three and leave in connection with the adoption of a child) in excess of the annual basic leave mentioned above, at the employer's decision, without pay. The provision of unused days of such leave shall be postponed to the period after the termination or lifting of martial law. At the employer's decision, unused days of such leave may be granted without pay.

During martial law, an employer may refuse to grant an employee unused annual leave days. Employers are also exempt during martial law from granting unused part of annual leave within 12 months after the end of the working year. The prohibition has been lifted on not granting full-time annual leave for two years in a row, as well as not granting it during the working year to individuals under the age of eighteen and those who have the right to annual additional leave for work with harmful and difficult conditions or of a special nature.

Importantly, during the period of martial law, an employer may refuse to grant any types of leave to an employee (except those due for maternity leave and leave to care for a child up to the age of three) if such employee is involved in the performance of work at critical infrastructure facilities.

7. Penal sanctions related to civil conscription or other mandatory duties to work.

Presently, effective legislation does not provide for special penalties/sanctions in regard to the refusal to engage in socially useful works and labor duty during martial law. Pursuant to the procedure for the engagement of legally capable persons in socially useful works during martial law, effective labor legislation applies, and labor duty does not require the mandatory consent of individuals in respect of whom such labor duty is introduced. This specifically applies to (i) registered unemployed and other unemployed persons, including internally displaced persons; (ii) employees of enterprises operating under martial law (in agreement with their managers), who are not involved in the implementation of mobilization tasks (orders) and are not included in the composition of civil defense object formations; (iii) persons employed in a private farming; (iv) students of higher education and trainees of vocational or technical educational institutions; (v) self-employed individuals.

The length of service of an individual during the period of participation in public, socially useful works while under martial law, as well as other works of a temporary nature, is included in the insurance length of service for subsequent insurance cases.

In addition, for example, unemployed individuals can be enlisted for public, socially useful and other temporary jobs only if there is no suitable job available for them. Individuals unemployed for up to 30 calendar days should be engaged in work according to their profession, specialty, qualification and experience gained in previous jobs, etc. For persons who are unemployed for more than 30 calendar days, community work does not require qualifications (specialties), professional training, or initial professional training, in particular directly at the workplace.

An unemployed individual may refuse to participate in socially useful works (community service); however, if an unemployed individual refuses for a second time to participate in such works, the individual will not receive future unemployment benefits.

Regarding penal sanctions for individuals called for socially useful works during martial law, according to labor law disciplinary sanctions established by the Labor Code, collective agreements (if applicable), and the internal labor rules are applied to employees who violate their labor duties. Fines for employers in accordance with the Law “On the Organization of Labor Relations under Martial Law” may be imposed by the state body responsible for policies on the supervision and control of compliance with labor legislation. At the request of an employee or a trade union, this state body may conduct unscheduled inspections for compliance with labor legislation by any legal entities in terms of compliance with the requirements of labor legislation and on issues of informal employment relationships and the legality of termination of employment contracts.

During martial law, in the case of compliance in full and within the prescribed period of prescriptions to eliminate violations discovered during any unplanned state inspections, the fines provided by Article 265 of the Labor Code of Ukraine are not currently applied. However, there is a risk that the employer may face fines under Article 265 if it does not comply with the instructions of the authorized state labor inspection service.

8. Regulation of civilian and military conscription/compulsory work requirements in situations that do not reach the threshold of an emergency related to national security, like Covid-19 and other emergencies.

Prior to the passing of the Law “On the Legal Regime of Martial Law” and the COVID-19 pandemic, the Ukrainian government in the Kuchma era passed the Law of Ukraine No. 1550-III “On the Legal Regime of States of Emergency”, dated March 16, 2000. The state of emergency law actually formed the basis for the martial regime law and contains similar powers and authorities for state authorities in times of emergency. As with the martial law regime, the Law “On the Legal Regime of States of Emergency” has been supplemented with special laws (labor, economic, currency regulations, safety measures, etc.) and sub-legislative acts for specific occasions, especially during the COVID-19 pandemic.

A “state of emergency” is defined by law as a special legal regime that can be temporarily introduced in Ukraine or in certain localities in the event of man-made or natural emergency situations, which have caused or may cause human and material losses, a threat to life and health. The definition includes attempts to seize state power or change the constitutional system of Ukraine by means of violence. It provides the relevant state authorities, military command and local authorities with powers necessary to avert such threats and to ensure the safety and health of citizens and the normal functioning of the national economy and state authorities in order to protect the constitutional system of Ukraine. The law also allows temporary, threat-driven restrictions on the exercise of certain constitutional rights by individuals and on the rights and legitimate interests of legal entities.

During a state of emergency, by presidential decree, the government may establish entrance/exit restrictions on citizens, foreigners and stateless persons, restriction of movement within the territory of Ukraine, and restrictions on transportation routes. Similar to the martial law rules, the government may strictly issue rules to maintain public order and protect objects crucial to the national economy and critical infrastructure. The law also allows the prohibition of mass events and strikes and allows the confiscation of property from individuals and legal entities.

Additional measures may also include:

- temporary or permanent evacuation of people with the provision of temporary or permanent living accommodations;
- establishment of temporary housing obligations for legal entities to accommodate parties involved in liquidating emergency situations;

- temporary expansion bans for parties not involved in the liquidation of emergency situations;
- quarantines or other sanitary/anti-epidemic measures:
- food and product rationing;
- mobilization, including the use of resources of enterprises, institutions and organizations of all types of ownership (with the obligation to compensate for losses);
- change of work or production systems for all types of entities in order to liquidate the emergency situation;
- other measures to ensure public order (curfews, document verifications, prohibitions on movement or change of residency, prohibitions on the sale of weapons and certain goods, restrictions on dissemination of certain types of information, communications, radio and television broadcast prohibitions, etc.).

Martial Law in Ukraine and Labor Options for Employers and Employees

After February 24, 2022, the Ukrainian Parliament moved quickly to pass several martial laws that help guide employers and employees in their labor relations. We will briefly outline below the impact martial law has had on labor relations in Ukraine. As of date, martial law has been extended to at least August 2024.

I. General Overview

The general rules governing labor relations in Ukraine during martial law were initially set forth in the Law of Ukraine No. 2136-IX “On Organization of Labor Relations During Martial Law”, dated March 15, 2022 (as lastly amended on November 22, 2023 – the “Law”). The Law applies to all local companies, foreign representative offices, private entrepreneurs that use hired labor, and individuals hired for contractual labor.

During martial law, employers and employees are able to agree upon the form of their labor agreements. Trial periods may be set for any category of employees as opposed to the limits set forth in the Labor Code of Ukraine (e.g., no trial period for employees under 18, students fresh out of university or graduate school, disabled persons, pregnant women, single mothers, etc.).

Many companies are currently facing work stoppages or difficulties in hiring new employees in order to stabilize the work force. Otherwise, employees have simply left the country with their families for safety reasons. Therefore, the Law provides that an employer may hire new employees under temporary “fixed-term” agreements for the “duration of martial law” or for unspecified periods to replace temporarily displaced employees. Under normal conditions, fixed-term agreements would need to have specific commencement and end dates regardless of the duration of specific conditions.

A) Change of Essential Work Conditions or Salary

One of the difficulties under the Labor Code of Ukraine is the change of essential working conditions without an employee's consent and the need to execute numerous documents to effect such change (notice, acceptance statements, new labor agreement or contract, internal orders, etc.). Under the Law, employees may be sent to perform work not provided by their labor contracts without their consent if such work will not be hazardous to the employee's health or is located in an area where no military action is in progress. Usually, employees are sent to assist with alleviating and clearing the consequences of past military actions or in circumstances that are or may become a threat to civilians. In these cases, the employee retains his/her average monthly salary for their usual work. Whereas the prescribed notice period for changing essential working conditions and salary is usually two months prior to such changes, martial law allows the employer to notify employees immediately upon implementation of the changes.

B) Termination of Labor Agreements

Martial law has temporarily changed the rules for termination of labor agreements at both the initiative of the employee and employer. For employees, if their area or region is under military fire, they are allowed to give immediate notice to terminate their labor agreement or provide a specific amount of time (one week, two weeks, month, etc.) prior to the intended termination date. Under normal rules, employees must give at least two weeks' prior notice to terminate their labor relations with an employer.

From the employer's side, outside of martial law, it has always been extremely difficult or next to impossible to dismiss employees while they were on temporary leave (sick leave, hospital visit, injury leave, etc.) or official leave (vacation, maternity leave, etc.). However, the temporary martial law rules allow an employer to dismiss a temporarily absent employee (except pregnant women and child-caring mothers) with the date of dismissal on the first working day after temporary or official leave ends. Discharge papers from hospitals, termination of rehabilitation procedures, end of annual or requested vacation requests on file or other documents serve as the basis of the eventual dismissal date. Notwithstanding the relaxation of these rules, it remains practically difficult to document and enforce dismissal dates when employees decide to "extend" their leaves using unscrupulous means.

C) Recordkeeping

While the rules regarding employers' obligations to organize labor documentation and archives are somewhat simplified under martial law, employers still must keep accurate records of work performed by employees and salary-related expenses. Martial law also allows employers to use alternative means for issuing internal orders and instructions to employees, such as electronic means, rather than the usual requirement that such orders and instructions strictly be issued in writing for physical familiarization. Notably, this issue must be specifically agreed upon by employers and employees in their labor agreements.

D) Nighttime Work, Hazardous Work

There are several rule changes for work during nighttime for certain categories of employees (pregnant women, mothers with child/children under one year old, disabled individuals, etc.). Interestingly, women, except pregnant women and women with children under one year of age, can consent to work in vital or hazardous workplaces, even underground work. Certain employee categories can be asked to work more than the usual 40-hour work week for up to 60 hours (with special rules for rest, lunch break and hours per shift).

E) Salaries

Employers must continue to pay salaries as per the normal labor rules – i.e., twice per month according to labor agreements with employees. However, under the Law, employers are encouraged to use their “best efforts” to ensure the timely payment of salaries under the current conditions. In other words, employers are able to avoid liability for late salary payments and suspend such payments if they can prove that the delay is/was caused by military actions or other “force majeure” circumstances. This being said, however, employers still need to keep accurate account of missed salary payments and use “best efforts” to make these salary payments over the duration of the corresponding labor agreements or upon restoration of work capacity.

F) Leaves

As to vacations and leaves, during martial law employers are permitted to limit basic annual vacations to the minimum of 24 calendar days in the current year. If an employee grants more than 24 calendar days of annual vacation to employees, then any vacation days unused during martial law can be transferred to the period after termination or cancellation of martial law. At the employer's decision, unused days of such leave may be granted to an employee without pay. While an employer can refuse to grant the use of unused vacation days during martial law, the rules regarding the transfer of such unused days are not applicable under martial law and, thus, these days can be transferred to periods after 12 months or granted even after two years of uninterrupted work without the use of unpaid vacation days. According to the Law, the provision of unused days of such leave shall be postponed to the period after the termination or lifting of martial law or, at the employer's decision, unused days of such leave may be granted without pay. Compensation for unused vacation days upon dismissal is treated as normally treated in the Law “On Vacations” during martial law.

Special martial law also provides an employee with the right to request unpaid leave for an unlimited term. During peacetime, the Labor Code allows employees to request such leave, but for no more than 15 calendar days per year. Unless certain outstanding circumstances dictate (e.g., care for sick or disabled children), displaced Ukrainian employees living abroad during martial law may request unpaid leave for a term of up to 90 calendar days without taking into account any time already spent on basic annual leave.

G) Labor Agreement Suspension

Martial Law now makes it possible for employers to “suspend” labor agreements. A labor agreement can be suspended in connection with military aggression against Ukraine if the situation renders it impossible for an employer to temporarily provide work and an employee to temporarily perform work under current employment arrangements.

Importantly, suspension of labor relations does not lead to dismissal or resignation of an employee. In other words, labor relations are not officially terminated. Official commentaries to the Law explain that the principal condition for suspension of labor relations is that the employer has “absolutely no possibility” to provide work and the employee has “absolutely no possibility” to perform work in present conditions.

In order to initiate suspension of a labor agreement, the parties, if possible, must inform each other by any available means of communication. The formalization of a suspension of labor relations depends upon who initiates the request for suspension (employer or employee). If the initiator is the employee, then he/she should submit an application/request, which should be accepted and registered by the employer in the employee’s staff file. If the initiator is the employer, then an application/request from the employee is not required and the employer simply notifies the employee via internal work order regarding suspension in writing or via electronic means. Employees are free to appeal an employer’s unilateral decision to suspend labor relations.

An employer may suspend labor relations with certain employees for up to 90 days; however, salary-related payments for the duration of the suspension of labor relations should be compensated in full by the state, which has initiated military aggression against Ukraine (in the current situation, the Russian Federation). Of course, the question is: how will this be practically implemented once martial law comes to an end? The recommended course of action is for the employer to refrain from paying salary during a suspension, but the employer’s accounting department should keep track of all salary-related payments during the time of suspension, including payments that accrue for the relevant social insurance funds.

The suspension of labor relations at the initiative of either the employer or employee may only last up until the officially announced end of martial law. If labor relations are reinstated under a labor agreement prior to the expiration of martial law, the employer has 10 calendar days prior to reinstatement to notify the employee about the need to commence work under normal working conditions.

II. Simplified Labor Relations

Due to the current armed aggression against Ukraine, the Ukrainian Parliament passed several laws, which regulate various relations during martial law. One of the most interesting novelties for employers is the possibility to opt into simplified labor relations with employees both during peacetime and martial law. This change was brought about by the addition of a new chapter to the Labor Code of Ukraine.

As a general overview, the parties to labor relations may elect so-called simplified labor relations (hereinafter – “SLR”) if labor relations arise between (i) employees and employers of small or medium size businesses (as defined by law) with an average amount of staff within the current calendar year of no more than 250 individuals or (ii) employers and employees with a monthly salary exceeding 8 minimum monthly salaries (as of April 2024 - 8 x 8,000 UAH = 64,000 UAH).

If the parties are eligible to elect the SLR, then they must voluntarily agree to enter into new labor arrangements. In other words, the employer cannot force the SLR on an employee, and during martial law, the provisions of the SLR shall apply to the extent that they do not contradict the legislation regulating labor relations during martial law, unless otherwise agreed by the parties. Should the parties wish to enter into SLR, they may agree upon individual conditions directly within their labor agreements. Obviously, the aim of the SLR is show team solidarity between employers and employees not only during martial law but also after its cancellation.

Interestingly, the new provisions allow the employer and employee to simplify their relations in terms of official labor documentation by entering into SLR. However, the employer should still keep clean records and accounts before the local tax and controlling authorities regarding working hours, permissible leaves, etc. Accounting and recordkeeping services are still important for employers to ensure transparency before employees and local authorities in future periods in case employee disputes arise.

The “simplification” lies within the fact that the employer and employee may regulate hiring and dismissal at their own initiative without straying too far from the basic rules provided by the Labor Code. This gives a bit of flexibility for the parties, and such issues as work schedules, salary amounts, leaves, benefits, bonuses and other remuneration can be negotiated in a manner that is beneficial for all parties.

During the period of martial law, certain rules of the Labor Code of Ukraine should not be taken for granted, but there are a several rules for martial law purposes that change such issues as work hours, annual vacations, unpaid leaves, weekly social guarantees and timely salary payments. Any issue that is not regulated by the parties within SLR or specific labor arrangements will be regulated by the effective provisions of the Labor Code. Below are the rules for annual paid vacations and unpaid vacations under SLR:

- Employees may generally request full or partial (in any increments) annual vacation;
- Employees may be granted in excess of 15 calendar days of unpaid vacation to handle family matters outside of the rules of the Labor Code;
- Employees may agree with employers that payment for annual vacation may be paid after the employee enjoys his/her annual leave (instead of payment prior to annual leave).

Nevertheless, there are certain essential conditions for entering into the SLR relationship, first being a voluntarily written employment agreement, which may either be for an indefinite or a fixed

term (until the performance of a specific volume of works). The following are the essential/mandatory terms and conditions for SLR labor contracts:

- Defined workplace, including distance working conditions or work outside of the usual workplace and general labor conditions;
- Contractual validity term under SLR conditions;
- Labor duties, including applicable work hours;
- Salary conditions (no less than twice per month), including leave allowances, bonuses, overtime pay, etc.;
- Annual leave conditions, including any additional leaves provided by labor law;
- Work conditions (work during holidays, nighttime work, overtime, dangerous or unhealthy work, heightened hazards, etc.);
- Notices regarding any change of labor conditions, optional termination or other notices to the parties;
- Conditions for introducing amendments to labor contracts;
- Non-disclosure covenants (commercial secrets, intellectual property, copyrights, etc.) and liability for breach of such covenants, including conflict of interests provisions;
- Severance payments upon termination of labor relations (whether via the Labor Code or specifically agreed upon conditions);
- Penalties for salary delays, if agreed upon.

As to the ever-famous “worsening of conditions of labor conditions” under the Labor Code, the SLR rules allow employers to actually “worsen” the conditions via notice two months prior to the changes without employee consent. Under the Labor Code, an employee can refuse to accept “worsening of conditions”, unless there was a substantiated change in production capacity.

Overall, this new addition to the Labor Code of Ukraine allows employers and employees to move a bit outside of the strict rules of the Ukrainian Labor Code, which were have been effective since 1971. However, these rules still do not allow employers to delve too far outside of the normal rules, as the Labor Code still requires compliance with its specific provisions, for example valid grounds for labor relations termination. Therefore, careful evaluation of each employee’s situation is vital in determining how to bring relations forward, whether they be labor-related or personal.

Finally, SLR relations can be formalized in writing or by agreement between the employee and the employer, an employment agreement under the SLR may be concluded in the form of an electronic document. This being said, Ukrainian employees can obtain qualified electronic signatures, but they have to go through a tedious and bureaucratic process. As a recommendation, the parties should sign the initial labor agreement and exchange originals with a provision that notices and internal orders can be communicated between the parties via electronic means. In any case, all labor documentation must be set forth in writing in Ukrainian, even internal correspondence.

A) Termination/Severance Conditions

Labor termination conditions have also been simplified, although formalities still apply under SLR relations. Termination of the SLR at the initiative of the employer on the grounds not provided for by the Labor Code should be carried out with justification (indication) of the reasons for such termination. The employer is still required to pay substantiated severance as established by a specific employment agreement but no less than the following minimum amounts:

- Half of the minimum monthly salary if the employee did not work for more than 30 days (currently, 8,000 UAH / 2 = 4,000 UAH);
- One minimum monthly salary if the employee worked for more than 30 days (8,000 UAH);
- Three minimum monthly salaries if the employee worked for more than one year (3 x 8,000 = 24,000 UAH);
- Five minimum monthly salaries if the employee worked for more than two years (5 x 8,000 = 40,000 UAH).

The new rules dictate as such that the employer is required to terminate labor relations via an additional agreement with the employee, while the employee is able to terminate labor relations at any time whether there is a threat of military action or not.

III. Unfixed Work Hours for Labor Agreements

In 2022, another option for labor agreements was adopted – labor agreements with unfixed work hours, a type of flexible labor relation. Although somewhat convoluted in its definition, unfixed work hours simply mean that the individual performing the work must perform his/her work at the employer's demand (when necessary and not constantly), provided that the employer adheres to the payment conditions established by the new Article 21-1 of the Labor Code. Thus, there are limited labor relations between the parties, but they should agree upon all specific working conditions in the labor agreement. The employer independently decides the need and time of engaging the employee in work, including the scope of work. The employer also agrees with the employee the contractually established term of his/her work schedule and the duration of working hours required for performing the relevant work. Of course, in this case, the employer should adhere to the standard requirements regarding the duration of working hours and rest periods set forth by the Labor Code of Ukraine.

Employers are limited to the hiring of up to 10% of the workforce under labor agreements with unfixed work hours. Employers, including private entrepreneurs, with under 10 employees may only conclude one labor agreement with unfixed work hours.

Unfixed work-hour agreements must, at a minimum, include:

- The method and timeframe for notifying the employee about the commencement of work to be performed. Notice must be sufficiently given to the employee to enable him/her to commence the performance of the specific assignment or his/her obligations;

- The method and maximum period of notification from the employee on his/her readiness to start work or refusal to perform it in cases provided for by Article 21-1 of the Labor Code;
- Basic work hours and days within which the employee can be asked to perform the task.

The Ministry of Economy approved a model labor agreement for working under unfixed hours in October 2022. The Ministry recommended that labor agreements with unfixed work hours should be concluded in writing with a description of the above minimum requirements and adherence to the model form of such agreement. The employer should also formalize the hiring of the employee in an internal order with a description of the job duties and work conditions of the employee.

Of course, there are limitations involved in this type of labor relationship. For example, basic working hours cannot exceed 40 hours per week at a maximum of a six-day work week. The employee has the right to refuse excess work performance if the employer requires work outside of the basic days and hours or if the employee has been notified of the availability of work in violation of the minimum notice period. However, if the employee refuses to work during any agreed upon basic days and hours, the employer may discipline the employee as per the regular rules of the Labor Code of Ukraine.

Salary under unfixed-hour agreements is paid on an hourly basis for work actually performed and reported by the employee. For fixed fee arrangements, the employer pays the employee for the full amount of work at the agreed upon rates in the labor agreement. Employers must provide at least 32 hours of work each month to employees with unfixed hour labor agreements and, therefore, even if the employer is unable to provide work 32 hours, monthly salary payments may not be lower than 32 hours of the employee's hourly rate per month. Overtime payments remain at twice the employee's regular hourly rate as per the Labor Code.

Employees working under unfixed hour labor agreements cannot be prohibited to work under alternative labor relations with other employers. This means that employers are not permitted to insert provisions into unfixed hour labor agreements that would restrict an individual's constitutional right to work in free conditions, including non-complete or similar clauses. Thus, employers should wisely choose the candidates for these types of labor agreements. However, the parties can agree upon termination provisions outside of the Labor Code of Ukraine, provided such additional provisions are directly related to the employee's behavior or other economic, technological and other factors.

Employees who work under these alternative conditions for over 12 months have the right to appeal to the employer to conclude definite or indefinite labor agreements under the general rules of the Labor Code. The employer has 15 calendar days to contemplate and resolve this issue or sever ties with the employee. Prior to the expiration of an unfixed hour labor agreement, the employee can repeatedly request the conclusion of regular labor relations within each 90-day period.

IV. Conclusion

While the situation may still seem grim for employers currently working under martial law conditions, the Ukrainian lawmakers are continually tweaking the laws to soften the impact of the Russian Federation's egregious acts against the peaceful Ukrainian population. When it becomes possible to resume normal life after this war, the Ukrainian Parliament will more than likely instill more modern and effective conditions into the currently effective Labor Code of Ukraine.

Employer's Compliance with Ukrainian Military Regulations

Mid-May 2024 issued in an important turning point for serious attention to complying with military regulations in Ukraine. At this time, two new laws came into effect, significantly increasing the responsibility of both citizens obligated for military service and their employers for violation of effective military registration rules.

The new laws include: Law No. 3543-XII "On Mobilization Preparedness and Mobilization Process" (effective as of May 18, 2024) and the Law "On Amendments to the Administrative Violations Code of Ukraine Regarding Enhancement of Liability for Violation of Military Registration Rules and Legislation on Defense, Mobilization Preparedness, and Mobilization Process" (effective as of May 19, 2024), as additionally clarified by Resolution No. 563 of the Cabinet of Ministers, dated May 16, 2024. This article focuses on the implications of the new rules for employers with draft-eligible employees.

I. Legal Background: Where Obligations Arise

Currently, only one provision in the Administrative Violations Code defines an employer's liability for violation of military registration rules: Article 210-1 "Violation of Legislation on Defense, Mobilization Training and the Mobilization Process". This provision does not define any particular actions (or omissions to act) that may lead to penalties, but inherently embraces a number of offences, as it arguably can be applied to any breach of obligations in this sphere imposed by other legislative acts.

Employer obligations in the sphere of defense are set forth in Article 16 of the Law "On Defense of Ukraine" (No. 1932-XII, dated December 6, 1991, as lastly amended on April 4, 2024). Most of these obligations are aimed at companies that perform state defense orders, manufacture products or provide services for the Armed Forces of Ukraine. However, some of the provisions apply to a wide range of companies. In particular, legal entities are obliged to:

- Maintain personal military records of conscripts, persons liable for military service and reservists;
- Facilitate these employees' preparation for and conscription to military service;
- Create appropriate conditions to enable employees to perform their military duties;
- Implement measures on military and patriotic education of employees.

More specific responsibilities of employers with regard to mobilization training and mobilization process are defined in Article 21 of the Law of Ukraine “On Mobilization Training and the Mobilization Process”, which include, among others:

- Cooperation with Territorial Centers for Recruitment and Social Support (hereinafter – TCRSSs), various agencies of the State Security Service and the Foreign Intelligence Service of Ukraine by assisting them with any possible requests;
- Ensuring timely notification of employees called to perform their mobilization duties;
- Contributing buildings, vehicles and other material and technical means to the Armed Forces of Ukraine and other military and civil defense agencies at the request of the authorities’ mobilization plans;
- Maintaining personal military records of conscripts, persons liable for military service and reservists employed by the company, taking actions aimed at their reservation during mobilization and special period, and providing respective reports in this regard to relevant state authorities;
- Maintaining up-to-date registration of vehicles owned by the company (which may be used for military purposes during martial law and other special periods) with respective TCRSSs.

II. New Amounts

What exactly has changed for employers with the new laws coming into effect? Previously, the amount of fines for violation of defense and mobilization rules under Article 210-1 of the Administrative Violations Code varied from UAH 5,100 to UAH 8,500. The new amounts applicable starting in mid-May are set immediately below:

Regular amounts (peacetime)	During special periods (including martial law)
UAH 17,000 – 25,000	UAH 34,000 – 59,500
UAH 25,500 – 34,000 for repeated offense within a year	

A “special period” is now in effect in Ukraine. This period started on March 18, 2014, even before the declaration of current martial law – when the Decree of the President of Ukraine № 303/2014 “On Partial Mobilization” came into effect. The current special period includes:

- mobilization times;
- war time (the period during which military actions take place, not to be confused with officially declared martial law); and
- partial reconstruction period when military actions end.

Cases on violation of legislation in the sphere of defense, mobilization training and the mobilization process (including the cases on violation of maintenance of military records rules by employers) are handled by TCRSSs, and their officers are authorized to impose fines in accordance with the procedure prescribed by Article 235 of the Administrative Violations Code.

III. How to Comply to Avoid Fines

The detailed procedure for maintenance of military records can be found in the “Procedure for Organization and Maintenance of Military Records of Conscripts, Individuals Liable for Military Service and Reservists”, approved by the Order of the Cabinet of Ministers No. 1487, dated December 30, 2022 (effective as of January 5, 2023). The principal duties under this Procedure, which employers should perform to avoid fines are as follows:

(a) Appoint responsible person(s)

The liability to arrange and maintain military records in companies is borne by their senior managers (directors). Specific work related to such maintenance should be entrusted to a specially appointed individuals or individuals (e.g., HR department, accounting department, etc.).

For companies that employ less than 500 conscripts, persons liable for military service and reservists, the record maintenance duties can be added to other (regular) employment duties of certain HR employees. If the above figure is between 500 and 2,000, a special position must be created for this purpose so that the person occupying it could deal solely with this task. If the figure is even higher, more positions should be created and combined into a special department. Appointment of individuals requires adherence to all current labor rules and regulations (issuing relevant staff orders, amending payroll/staff schedule, defining additional remuneration for combined labor duties, etc.). In addition, your local TCRSS should be notified on appointments within 7 days according to the approved form, which should be executed and sent to TCRSS along with a cover letter via mail or personal delivery.

(b) Verify military documents for all new hires

All new employees, who are recognized as conscripts, individuals liable for military service and reservists, must upon hiring provide their military registration card with a special entry from a particular TCRSS (in accordance with their registered residence address), showing their effective military registration. Upon issuance of the relevant employment order, such new hires should familiarize themselves with the military registration rules and confirm the same with their personal signature to the employer.

Information on relevant new employees should be entered into the company’s military registration records (within 5 days) and also sent to the local TCRSS in accordance with the approved form (within 7 days).

(c) Take carefully regarded steps for female employees

For most women in Ukraine military registration is voluntary. The only exception is for women with medical or pharmaceutical higher education degrees. For such category, registration as women subject to military service has been mandatory from October 26, 2022. Up until May 18, 2024, there had been a grace period for employers, prospectively until the end of 2026, during which they could treat women with relevant educational status as not eligible if they had not yet registered themselves as such by January 5, 2023.

However, this exception was cancelled by the Order of the Cabinet of Ministers No. 563, dated May 16, 2024, and currently all women with corresponding education should present their military registration cards and should be treated as eligible for enlistment to military service in all respects for purposes of company military registration records. The latter may also apply to women who registered voluntarily although they received an education other than medical or pharmaceutical education. In case of any female employees with the relevant education status, who have not yet registered as eligible for military service, the employer is obliged to notify their respective TCRSS about such employees.

There are certain pitfalls for the employer pertinent to this requirement. Obviously, if a woman's position requires medical or pharmaceutical education, the employer should be fully aware of this fact. However, any female employee applying for or already working at any position, which does not require such qualifications, may nevertheless have a medical/pharmaceutical diploma or may have already voluntarily registered, and the employer is not entitled to require information about qualifications/experience not relevant to the current position. The question is: how does the employer make sure that they do not violate the law by overlooking employees, who should be accounted for in their military records?

Firstly, we can recommend amending the company's Internal Regulations to add the obligation for female employees to notify the employer about (i) their medical/pharmaceutical qualifications, if any; and (ii) voluntary military registration, if applicable. You can also issue a separate, specified notification to the same effect, whereby all female employees would be asked to confirm this information with their personal signatures. The same may be applied to newly hired employees – request a signed confirmation along with their work application that the individual does not have any medical/pharmaceutical qualification and has not registered voluntarily for military service.

(d) Maintain military records

Employers are obliged to maintain military records in their companies in accordance with standard forms. These forms include lists of personal military records and up-to-date accounting spreadsheets.

Lists, each containing specific information required by the pertinent forms, should be prepared separately for the following categories of employees:

- eligible and reserved employees of officers' ranks;
- eligible and reserved employees of lower ranks (private corps and sergeants);
- eligible and reserved female employees;
- conscripts (under the age of 25).

The up-to-date accounting spreadsheet contains the aggregate number of service-eligible employees of each respective category prepared based on the above-mentioned lists. Any changes in the statistics (new hires, dismissals, drafted to military service, etc.) should be entered into the spreadsheet within 5 days. The lists should also be amended within 5 days if any employees are hired or dismissed. However, if any employees are to be removed from military records for any reason (drafted to military service, reached the age limit for military service, excluded due to health, etc.), they should remain on the current lists until the end of calendar year.

Some employees may also move from one list to another. For example, if an individual reaches the age of 25 and registers with TCRSS as eligible for military service, then they should be referred to the respective eligible and reserved employees list. Or, there may be a rank upgrade entailing referral of an employee to the officers list.

Both the lists and the spreadsheet may be maintained in electronic format throughout the year; however, once per year, by January 25th, the above documents containing information effective as of January 1st should be printed out, signed by the responsible employee (both documents) and the company's senior executive officer (lists only) and duly registered within the company's internal HR document system.

- (e) Reconcile military registration data with TCRSS, promptly notify about changes and comply during audits

Military registration data contained in the aforementioned lists and spreadsheet should be regularly, at least once per year, verified and certified internally by comparing the information contained therein with the primary information from all employees' personal documents (passport, military registration card, etc.). This way the employer will be prepared to reconcile their military records with the records currently held by the TCRSS. "External" reconciliation requires verification of data against the record of all TCRSSs with which your employees may be registered according to their place of residence and of the local TCRSSs according to your company's legal address.

In the interim, the employer is also obliged to promptly notify the TCRSS about the changes in their employees' registration data, in particular: name, passport details, residency address, family status, education and position in the company. Such changes should be reported by the 5th of the month following the month during which the changes occurred.

Finally, the company may from time to time be subject to audits by a number of military and civil authorities (not only TCRSSs) aimed at verification of compliance with all rules and regulations related to maintenance of military records. Such audits may be both regularly scheduled and unscheduled. The issues to be audited will be announced to the company at least 10 days prior to the audit. These issues may include appointment of responsible person(s) for maintenance of military records and their qualifications, adherence to the procedures of hiring and dismissal of employees eligible for military service and respective notification of TCRSS, availability and correct execution of all documents related to maintenance of military records, adherence to reservation rules, etc.

(f) Notify employees about summons to TCRSSs

TCRSS may request an employer to notify certain employee(s) about a request to appear before the relevant TCRSS on a specifically appointed date and time and to serve the relevant employee(s) with these official summonses. This requirement has always been present in the Procedure from the beginning, but recent amendments clarified the procedure for employers to some extent.

In order to prove compliance with this norm, it is important to take the following steps:

- register the request for notification of employee(s) in the incoming mail list (to fix the exact date and time of receipt);
- issue an internal order on notification of employee(s), preferably on the same day or on the next day latest, if the request came in late during the previous day;
- ask the summoned employee(s) to sign the order and serve them their summons;
- should the summoned employee(s) refuse to take and/or sign the order the summons, read them the order aloud and ask two witnesses to confirm this fact in a respective internal act;
- if the summoned employee(s) are not available to sign the order personally due to (i) remote work; (ii) sick leave; (iii) business trip or (iv) vacation, then the employer should send them such order for signature via registered mail;
- send (i) a copy of the order and, if necessary, the act on refusal to sign, (ii) the documents confirming the reasons for employee's absence (order on vacation, business trip or remote mode of work, copy of sick leave), if applicable, and (iii) documents confirming notification of an absent employee (mail receipt) to the TCRSS within 3 days from receipt of the TCRSS's request;
- if you are aware that a summoned employee did not appear at the TCRSS in due time (i.e., they were at work during this time or they confirmed so in response to your direct question), notify the TCRSS about same.

(g) Raise employees' awareness

One of the employer's obligations is to raise awareness of employees about military registration and compliance. The law does not contain specific instructions with regard to the approach, so there is room for creativity. At a minimum, you can print out the pertinent extracts from the

applicable laws and regulations, and display them at a designated information point. If you wish, you can also plan some thematic meetings where employees can ask their questions on issues they do not fully understand or allow them to schedule private consultations with the individual responsible for maintenance of military records.

IV. Conclusion

The rules set for employers by these challenging times are not always easy to comprehend, let alone to follow to the letter in practice. Meticulous maintenance of military records is a relative novelty for Ukraine, and some employers continue to discount these requirements at the risk of being fined. That is to say, until recently, as the increased amount of fines now serves as incentive to organize the relevant personnel files within the company. If you feel that it is difficult or overwhelming to independently cope with these legislative changes, we recommend asking certified professionals for advice and assistance.

Ukrainian Public Safety Guidelines in 2024

I. Introduction

Public safety has always been important in Ukraine, and especially now, during wartime, when Russian missiles and drones wreak death and destruction without warning. Today's reality requires all employers to pay extremely close attention to the safety of their employees at workplaces, as well as clients and visitors. This applies to both small companies and large operations alike, including offices, shopping centers and production facilities.

In Ukraine, public safety guidelines in emergency situations are governed by the Civil Protection Code of Ukraine. In particular, Article 130 of the Code requires all business entities to develop an Emergency Response Plan or an Instruction on Personnel Actions, depending on the number of their employees. For example, if a business entity employs 50 people or less, it must develop instructions for employee actions in case of a threat or occurrence of an emergency.

If a business can potentially have 100 or more visitors, the company should develop a Response Plan that takes into considerations not only employees, but also people (clients, customers, service providers, couriers, etc.) visiting the business. In addition, during martial law, regulatory authorities may require certain places, such as office centers with mass occupancy, to have individually tailored Response Plans based on their location and access to safety zones.

Although providing civil protection is mainly the government's job, according to Article 20 of the Civil Protection Code, businesses are also obligated to independently implement civil protection measures at their facilities by organizing and carrying out warnings and evacuations during emergencies. One such measure is the installation of an emergency notification system in accordance with the Regulation "On Notification of a Threat or Occurrence of Emergency and Communications in Civil Protection," approved by Cabinet of Ministers, dated 27.09.2017 No.

733. This regulation requires managers and owners of facilities with more than 100 persons (employees and customers) to have consistent air raid alerts through a network of internal speakers.

According to Article 20 of the Civil Protection Code, the company's manager or director is responsible for the implementation of civil protection measures. Thus, the manager or director needs to appoint a person who is responsible for all public safety measures, including preparation and approval of all necessary documents, employee training, identifying a shelter with directions thereto, etc. These measures should be contained in an Emergency Response Plan as well as instructions on employee actions in the event of an emergency, detailing all the actions that must be taken by designated individuals during emergencies.

II. Required Documents

Firstly, all businesses should prepare Emergency Response Plan Guidelines. The Kyiv City Military Administration provides arguably the best public safety guidelines for business entities with mass presence of people, which can be used for developing internal company Emergency Response Plan Guidelines, including the following:

- a. Ensure the availability and functioning of a notification system for cases of a military emergency;
- b. Identify the nearest shelters for visitors and staff;
- c. Mark evacuation routes to shelters;
- d. Appoint persons responsible for notification, opening the doors of emergency evacuation exits, ensuring the evacuation order, preserving property;
- e. Develop clear instructions and training for employees on how to act upon an alert;
- f. Prominently place information for visitors about the course of actions following an alert;
- g. Convey information to visitors, at consistent intervals, about their actions in the event of a threat or occurrence of an emergency situation;
- h. Organize the rapid evacuation of visitors and staff in the event of a threat;
- i. Verify the absence of individuals within the premises after evacuation;
- j. If necessary, limit the number of visitors on the premises.

Additionally, the Ukrainian State Service for Emergency Situations approved a list of documents related to the safety of workers that businesses must internally develop and maintain (approved by the Order of the National Emergency Service of Ukraine dated July 12, 2016 No. 335). According to this list, the following documents are necessary to support safety actions:

1. Ensure the availability and functioning of the notification system in the event of a military emergency (Director's Resolution).

According to the Resolution of the Cabinet of Ministers No. 733, dated September 27, 2017 (as further amended), managers, directors and owners of facilities with more than 100 persons are

obliged to maintain telecommunication lines and notification systems and, where necessary, install alarm and loudspeaker devices, electronic information boards, radio broadcasting points, etc.

Additionally, the director's resolution must identify a responsible person ("Responsible Person") who will monitor air raid siren alerts and who, in turn, must inform visitors and employees about air raids and take appropriate actions (e.g., instruct to go to the nearest shelter, emergency exit locations, etc.). The actions of the employees after receiving an air raid alert are regulated by instructions on employee actions in the event of a threat or occurrence of emergency situations (and, if available, the Emergency Response Plan).

2. Identify the nearest shelters for visitors and staff (Emergency Response Plan).

The Responsible Person must identify existing shelters for staff and visitors closest to the business's location. Such shelters should be indicated in the Emergency Response Plan for the staff and visitors. If the company decides to independently arrange safety shelters for the protection of staff and visitors, it must take into account complicated civil defense requirements that govern the creation and maintenance of protective structures. In this case, you would need a Director's Resolution regarding the appointment of a person responsible for the maintenance and operation of the shelter for the staff/visitors of the Company.

3. Display evacuation routes to nearby shelters.

The Responsible Person develops evacuation routes for employees and visitors from the company's premises to the shelter. When planning such routes, the Responsible Person develops the safest routes by taking into account areas of the facility/facilities with windows or other hazardous factors. Routes to shelters should be clearly defined/displayed in an evacuation plan diagram. Diagrams identifying shelters and showing the routes should be placed within the company premises in clearly visible places on each floor (if applicable).

The shelter itself should contain signs indicating the main and emergency exits from the shelter and directions of movement to them with appropriate symbols and, preferably, photo luminescent indicators. The shelter must be equipped with a room plan, indicating the main and emergency exits, phone numbers for calling emergency services, alternative means of communication (portable radio station) and lighting, seating areas, heating (blankets), drinking and technical water supplies, prepared or semi-prepared food products with long-term shelf-life, first aid supplies, hygiene products, fire extinguishers, electric outlets, etc.

4. Appoint persons responsible for public announcements, opening emergency door evacuation exits, ensuring evacuation order, protecting property, etc.

The company management has to appoint individuals tasked with notifying staff and visitors, as well as persons responsible for opening emergency door evacuation exits and shelter doors (an

employer's shelter must be open and accessible during air raid alerts), and ensuring the procedure for personnel/visitor evacuation and the preservation of property.

5. Draft clear instructions for employees regarding how to act in case of an alert and conduct training with them.

Each company must have detailed instructions that set forth required employee actions in the event of an emergency. Company employees must clearly understand the sequence of each individual's actions as well as their own specific actions (depending on positions/departments) upon an alert signal.

For example, in case of an air raid alert, the person responsible for the alert must turn on the siren for up to 3 minutes, which signifies that everyone's close attention is required. Furthermore, the responsible individual needs to verbally inform everyone about an air raid alert using an internal loudspeaker or other type of notification system. The designated individual must provide employees and visitors with instructions on further actions and inform them about the location of shelters and evacuation routes. It is also vital to remind all personnel and visitors about the dangers of failing to move into a shelter. After receiving an "all clear" message, the responsible person must verbally notify everyone to the extent possible.

In order for employees to efficiently perform the above steps, the business owner should conduct regular training for all of its employees. In accordance with the Sample List of Documents on Civil Protection Matters, approved by Order No. 335 of the State Service of Ukraine for Emergency Situations, dated July 12, 2016, enterprises with 50 or fewer employees have the following options in training their employees:

- a. Program of general employee training;
- b. Program of additional training on worker safety;
- c. Program of minimum fire-safety steps for employees;
- d. Program of accelerated training for employees during extraordinary periods;
- e. Schedule of special safety/technical object use exercises and training on civil protection issues;
- f. Information and reference board on civil protection issues.

In cases of specialists, including personnel who can provide pre-medical assistance, additional training should be offered, especially for upgrade of qualifications.

6. Display written information in a prominent place for visitors about their course of action in case of an emergency notice.

In order to inform visitors (tenants) about their course of action in the event of an alert signal, the company director or manager must:

- a. display in prominent places (near all entrances to the building) a map with direction to the nearest shelter and instructions for visitors (tenants) when an “air raid alert” is announced;
 - b. at all entrances to the building, distribute a checklist of visitor actions when an “air raid alert” is announced;
 - c. place on all floors of the building indicators (arrows) showing exits and emergency exits from the building and install indicators (arrows) at the exits to the routes leading to the nearest protective shelters;
 - d. during the day, periodically broadcast through loudspeakers updates regarding visitors’ actions in case of an “air raid alert”.
7. Arrange evacuation of visitors and staff in the event of a threat.

In order for an evacuation to be conducted as effectively as possible, the company should develop an evacuation plan for individuals and material assets with specific instructions. The list of documents (contained in Order No. 335 of the State Service of Ukraine for Emergency Situations dated July 12, 2016) also requires the execution of a so-called “administrative act” on the creation of temporary evacuation authorities. For example, on-duty personnel are assigned to be responsible for evacuation to the shelter, as well as meeting and accommodating visitors and staff in the shelter.

8. Check the absence of people on the premises after evacuation.

A designated individual or group of individuals should be appointed to make sure that all individuals have left the building and to close all doors after the last person has left the building.

If some employees or visitors do not wish to leave during an air raid alert, the designated individual(s) should be advised to obtain written consent in advance, stipulating that all individuals who chose to remain in the premises are independently responsible for their actions during the air raid alert.

9. If necessary, limit the number of visitors.

Of course, a company can implement additional measures to improve the safety of employees during an air raid alert. For example, depending on the situation in your region, the company director or manager may decide to limit the number of visitors/tenants/other third parties in the company’s premises or in business center per day or at certain hours.

III. Liability for Failure to Comply

If an injury or death occurs at the workplace due to a missile or drone strike, an official investigation will be conducted. The authorities will look at why the employee was at the workplace, and not evacuated to a shelter. If the investigators find any violations, the head of the

company (manager or director) may be held criminally liable on the basis of Articles 367 (official negligence), 270 (violation of fire safety requirements), as well as Art. 271 (violation of labor protection legislation) of the Civil Protection Code.

If a business has complied with all of the legal requirements (e.g., conducted the necessary briefings, trained employees, implemented appropriate notifications about air raid alerts, etc.), and the investigators determine that the manager performed all their functions properly (e.g., the employee was not forcibly left at the workplace during an alarm), the business will not be held liable for their employee's own actions who voluntarily chose not to leave the premises.

IV. Conclusion

Public safety has never been more important than it is today. To protect its citizens, the Ukrainian government has taken steps to minimize civilian losses in case of Russian attacks on office buildings, shopping centers, supermarkets, production facilities, etc. At the same time, this legislation also applies to smaller companies with less than 50 employees. Failure to comply with the laws may lead to criminal liability in case of death or injury. For all of these reasons, it is important for all businesses to develop and implement an Emergency Response Plan and all of the accompanying documents described herein.



**10 Antonovycha Street, Suite 8
01024 Kyiv, Ukraine**

office@frishberg.com

Note: analysis contained herein is provided as general information and should not be relied upon as legal advice.