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DISCONTINUING EMPLOYMENT IN THE DRAFT OF LABOUR CODE OF UKRAINE

Ukrainian labour law has inherited a significant number of concepts and approaches from the Soviet era. As for today, the draft of Labour Code has been prepared for the second reading by the Verkhovna Rada Committee on Social Policy, Employment and Pensions [1]. It provides us with new grounds for dismissal and redundancy. The employer may dismiss an employee in the following limited cases:

– changes in the company’s activities, including its liquidation or reorganisation, bankruptcy, changes in its business, or reduction of its staff. In this case, the employer must notify the relevant government authorities about the pending dismissal of its employees two months in advance and provide each affected employee with a two-month dismissal notice, which cannot be replaced with a payment. The consent of the company’s trade union is required for the dismissal of each member employee subject to dismissal on this ground (except for the company liquidation);

– non-compliance by an employee with his or her position due to inadequate qualification or a health condition interfering with the ability to perform employment duties;

– systematic failure by an employee to fulfil his or her employment duties if disciplinary actions were previously taken against him or her;

– failure by the employee to appear at work for more than three consecutive hours in one working day without a good reason for such absence;

– failure to appear at work for more than four consecutive months due to a temporary incapacity to work unless a longer term is permitted by law for certain diseases and unless such incapacity was caused by work-related illness or severe injury;

- if an employee came to his or her workplace drunk or in a narcotic-induced or intoxicated state;
- resumption of work of another employee who was previously occupying this position;
- if an employee was found guilty of larceny of his or her employer's property;
- if an individual owner has been called up for the military service or mobilised during a special period; and
- establishment during the probationary period of non-compliance by an employee with his or her position or work performed by him or her.

The trade union's consent is required for dismissal of the trade union member employee on the grounds above. Some employees can be dismissed on the following additional grounds stipulated in the Labour Code:

- gross violation of employment obligations by a director of the company or its branch, or his or her deputy, chief accountant, his or her deputy and some state officials;
- deliberate action of a company director which results in untimely salary payment or payment of a salary that falls below the statutory minimum salary;
- purposeful actions of an employee managing funds or commodities if such action results in the loss of trust in such employee;
- immoral misconduct of the employee performing pedagogical functions that prevents such employee from further holding this position;
- working under direct supervision of the close person in the meaning of the Anti-Corruption Law;
- termination of the authorities of a company officer.

It is prohibited to dismiss:

- employees during their sick leave or vacation (if initiated by the employer);
- pregnant women, women with children under three, single mothers with children under 14 or a disabled child, except in the event of company liquidation; or the expiry of a fixed-term employment agreement or contract for the relevant employee; employees on the sole basis of reaching retirement age; or trade union member employees without obtaining prior trade union consent (in most cases). On the dismissal date, the employer

provides the employee with his or her labour book and dismissal order, and settles all payments due to this employee.

When an employee is dismissed due to redundancy or other changes in the company's activities, an employee's non-compliance with his or her position, or the resumption of work of another employee, he or she is entitled to one average monthly salary as a severance payment. The Labour Code also establishes a severance pay due to company officers dismissed because of the termination of their authorities in the amount of their six-monthly average salaries. Employees subject to dismissal on any grounds provided by Ukrainian law are entitled to receive compensation for unused vacation. The employer shall also pay to an employee any benefits that may be specified in a written employment agreement or contract with this employee and the collective bargaining agreement. An employer may unilaterally initiate the dismissal of its employees due to redundancy. The draft of Labour Code of Ukraine lays down the employer's duty to provide a reasonable statement of the reasons for the upcoming dismissal, the number and categories of employees who may be affected by the dismissal, timing of the dismissal, criteria for selecting employees to be made redundant etc. not later than two months before the planned layoffs to the elected body of the primary trade union. The employer is obliged to notify the employee of the forthcoming redundancy in writing not later than two month (if it is a small business not later than one month). By agreement of the parties to the employment contract, a two-month warning period can be reduced to one month. In this case the employer is obliged to pay monetary compensation to the employee who has not worked before the expiration of the two-month warning period in the amount of the average monthly salary. The employee may be made redundant within four months after the warning, but not later. Within the period of warning, an employee, at his request, may be given free time from work for finding a new job on his own, but not more than one working day per week. The salary in this case is preserved.

By agreement of the parties to the employment contract, a warning about the forthcoming redundancy may be replaced by monetary compensation in the amount established by the collective agreement. Such compensation should not be less than two monthly salaries [2].

In our opinion, the new code regulates the terms of dismissal of a person from a position in more detail. In the case of massive reductions, it

provides benefits and guarantees for workers. At the same time, the layout of the code prescribes the conditions under which the dismissal of an employee on the initiative of the employer is legal. It abolishes benefits for mothers who have children of all ages and makes them equal to the terms of dismissal with other workers.

References:

1. The Employment Law Review Tenth Edition. Reproduced with permission from Law Business Research Ltd, 2019. London. – Chapter 46 (Articles 628-641)
2. Trends of Layoffs in the Draft Labour Code of Ukraine. [Електронний ресурс] – Режим доступу: <https://www.legalalliance.com.ua/eng/publications/trends-of-layoffs-in-the-draft-labour-code-of-ukraine/>

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THE RIGHT NOT TO BE TRIED OR PUNISHED TWICE

It is beyond any doubt, that when we think of a criminal case or any other matter, it is quite challenging to pass a “completely fair” decision. In fact, to find the guilty person, is not the biggest problem. But what shall we do, if a person has already been punished for his crime, but it turns out, that it was a graver crime that entails a more severe sentence? For the injured party the right decision would be to sue the offender for the second time and demand further punishment. But as for the criminal’s interests, there would be a breach of the principle of “Non bis in idem” which is translated literally from Latin as "not twice for the same [thing]".

The right not to be tried or punished twice is one of the fundamental human rights, that originates from Roman civil law (Justinian’s Code “Corpus Juris Civilis). It is an inalienable segment of the right for fair trial. Nowadays it is codified in Article 4 Protocol No. 7 of the European Convention on Human Rights:

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for the offence for