

## Legal Alert

### Labor Law



Topic of the issue:

## Parliament improves remote work, home-based work and flexible working hours regulation

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On 4 February 2021, the Parliament of Ukraine adopted the long-awaited amendments to the Labor Code and the Law of Ukraine «On Occupational Safety» to regulate the matters of remote, home-based work and flexible working hours (hereinafter – **«FWH»**). Not only does Law of Ukraine «On amendments to some legislative acts on improvement of legal regulation of remote work» (hereinafter – the **«Law»**) eliminate the shortcomings of the previous attempt to «legalize» remote work under the Law of Ukraine No. 540 of 30 March 2020, it also modernizes the relevant regulation. The Law enters into force on the day following its promulgation.

Below we describe the most significant amendments.

#### Note:

*This publication is not a legal advice and provides only general information about the most important legislation changes in Ukraine. In order to avoid any risks prior to making any decisions related to information contained in this publication, please, seek the legal advice.*

## General changes

- **Simplified requirements for formalizing** remote and home-based work, FWH for the time of threatening spread of an epidemic, pandemic, threat of armed aggression, emergency, etc. – **without observing the procedure for changing essential working conditions under part 3 of Article 32 of the Labor Code** (i.e. without 2-month notice). Formalization – by an order (familiarization within two days, however, until the new conditions are introduced).
  
- Additional **guarantees for some categories of employees:**
  - employees with children under 3 (6) years of age, pregnant women, parents of two or more children under the age of 15 or of a child with a disability, and other less socially protected employee categories may **work remotely/at home**, if possible, depending on the work performed and the employer's having the appropriate resources and tools to that end;
  - an employee may request a temporary (up to 2 months) transfer **to remote work** from the employer in the event that acts that contain signs of **discrimination** have been committed against that employee in the workplace, given the employee's job function.
  
- **Familiarization** of employees with documents is allowed **with the use of means of electronic communication specified in the employment agreement** (hereinafter – the «EA»). In this case, the familiarization shall be deemed confirmed by the actual exchange of electronic documents.
  
- **The requirement regarding the inspection of residential premises** for employees entering into a Home-Based Work EA is **cancelled**.



## Remote and home-based work: Main differences



### REMOTE WORK

- An employee shall **independently determine her/his workplace** anywhere outside the employer's premises/territory and is responsible for ensuring safe and harmless working conditions;
- It is possible to **combine** remote work with working on the employer's territory;
- Work is performed with the use of information and communication technologies.

Only for work that **does not imply any dangerous and harmful** production (technology) factors.

An employee distributes the working time at her/his own discretion, (s)he is not subject to internal labor regulations, unless otherwise determined by EA.

#### + Period of disconnect

#### The EA prescribes:

- the procedure and terms of providing equipment, software and hardware, means of information protection, and other means;
- the amount, procedure and terms of paying compensation to employees for the use of their own/leased means;
- the procedure for reimbursement of other expenses.

If no such terms are included in EA, the employer shall be responsible for equipment provision and the relevant expenses.

The procedure and terms for employees to submit **performance reports** are set out in EA.



### HOME-BASED WORK

- Work is performed **at the employee's place of residence** (as a rule);
- The workplace has a fixed area and the technical means necessary to manufacture products, render services;
- An employee's **fixed** workplace may not be changed without the parties' agreement, except when reasons occur that render an employee's work impossible.

Only for persons who have or may be taught the necessary **practical skills**.

Employees are subject to the employer's general work mode, unless otherwise provided by EA.

#### The employee is entitled to:

- be provided with materials and tools required to perform the work by the employer, unless otherwise provided by EA;
- compensation under Article 125 of the Labor Code if (s)he uses her/his own tools.

The employer independently decides in what manner the work is entrusted to the employee and controlled as well as ensures that **the work performed is reliably recorded**.

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## Model-based written EA

(except for a threatening pandemic etc.)

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**Full material liability** of employees for the equipment provided to them for use (with the possibility of concluding an **agreement on full material liability** regardless of an employee's position)

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The employer is obliged to **regularly instruct (train) an employee on labor protection and fire safety issues** (may be carried out remotely, using **information and communication technologies**)

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**The employer shall be liable** for the safety and proper technical condition of the equipment and means of production transferred to an employee for remote or home-based work

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**FWH**



**Flexible working hours**



**variable working hours**  
(an employee determines the periods of work at her/his own discretion within the normal limits)



**break time for rest and meals**

### FWH shall not be applied at:

continuously operating enterprises, institutions, organizations

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in other cases, due to the specifics of activity, when the performance of duties by an employee requires her/his presence within clearly determined working hours

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in case of multi-shift organization of work

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when FWH are incompatible with the requirements for safe working conditions

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## **FWH may be set:**



### **at an employee's request**

(without observing with the notification requirements)



### **by the employer**

– in case of production necessity with an at least 2-month notice of changed work mode

In case of **production and technical necessity and/or to perform urgent or unforeseen tasks**, the employer may temporarily (for a period of up to 1 month during a calendar year) apply the **general work mode** to employees who have established FWH (provisions of part 3 of Article 32 of the Labor Code on changing the essential working conditions do not apply).

In case of violation of the established FWH, additionally to appropriate disciplinary penalties, an employee can be transferred **to the general work mode without observance of part 3 of Article 32 of the Labor Code**.

The adoption of the Law has been a significant step forward in improving the labor legislation. We hope that the Labor Code will be updated in the near future regarding a number of other outdated or not regulated labor law concepts.