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Remote work in Ukraine (including remote work of foreign workers)

On February 27, 2021 the Law of Ukraine "On Amendments to Certain Legislative Acts Concerning Improving the Legal Regulation of Teleworking" came into force, the adoption of which was dictated by the need to provide additional social and economic guarantees in connection with the spread of coronavirus disease (COVID-19).

In addition, the previous legislation of Ukraine regulating the issues of remote work (Regulation on working conditions of homeworkers, approved by the decree of the USSR State Committee on Labor and Social Issues and the All-Union Central Council of Trade Unions Secretariat dated 09.29.1981 No. 275/17-9, approved by the protocol of the Ministry of Labor of Ukraine dated 06.21.1995 No. 4) was too outdated and absolutely did not meet the modern challenges of the labor market.

Thus, by the above law, the Code of Labor Laws of Ukraine was supplemented with articles on "Homework" and "Distance work".

Below are the definitions of the above legal institutions, as well as the main features and differences between home work and distance work.

Home work is a form of work organisation in which work is performed by an employee at his place of residence or in other premises specified by him/her, characterised by the presence of a fixed zone, technical means (basic production and non-production assets, tools, devices, inventory) or their combination necessary for the production of products, the provision of services, the performance of work or functions provided for by the constituent documents, but outside the production or working premises of the owner of the enterprise, institution, organisation or his authorised body.

Features of home work:

1. the employee's workplace is fixed and cannot be changed at the initiative of the employee without agreement with the owner or owner's authorised body;
2. employees are subject to the general working regime of an enterprise, institution, organisation;
3. performing work at home does not entail changes in rationing, wages and does not affect the scope of labor rights of workers;
4. the provision of the means of production, materials and tools necessary for the worker to perform home work is assigned to the owner or his authorised body;
5. for the time of the threat of the spread of an epidemic, pandemic, the need for self-isolation of an employee in cases established by law, and / or in the event of a threat of armed aggression, natural or man-made disaster, or emergency of other nature, home work may be introduced by order (decree) of the owner or his authorised body without the obligatory conclusion of an employment contract for home work in writing;
6. pregnant women, workers with a child under the age of three or caring for a child in accordance with a medical report until they reach the age of six, workers with two or more children under the age of 15 or a child with disabilities, parents of a person with disability from childhood of subgroup a of group I, as well as persons who have taken care of a child or a person with a disability since childhood of subgroup a of group I, can work at home work, if possible, taking into account the work performed, and the owner of the enterprise, institution, organisation or the body authorised

by it has the appropriate resources and means for this.

Remote work is a form of work organisation in which work is performed by an employee outside the work premises or the territory of the owner or his authorised body, at any place of the employee's choice and using information and communication technologies.

Features of remote work:

1. the employee independently determines the workplace and is responsible for ensuring safe and hazardless working conditions in the workplace;
2. the employee distributes working time at his own discretion, the internal labor regulations do not apply to him, unless otherwise specified in the employment contract;
3. performance of remote work can be combined with the performance by the employee of work at the workplace in the premises or on the territory of the owner of the enterprise, institution, organisation or body authorised by him;
4. the procedure and terms for providing employees who perform work remotely with the equipment, software and hardware, information security and other means necessary for the performance of their duties, the procedure and terms for submitting reports on the work done by such employees, the amount, procedure and timing of payments to employees compensation for the use of equipment belonging to them or rented, software and hardware, information security and other means, the procedure for reimbursing other expenses related to the performance of remote work are determined by an employment contract for remote work;
5. an employee who performs teleworking is guaranteed a period of free time for rest (disconnection period), during which the employee can interrupt any information and telecommunication communication with the owner or his authorised body, and this is not considered a violation of the terms of the employment contract or labor discipline;
6. an employee may demand from the owner of an enterprise, institution, organisation or his authorised body a temporary transfer to remote work for a period of up to two months, if actions containing signs of discrimination were committed against him/her at the workplace. At the same time, the owner of an enterprise, institution, organisation or a body authorised by him may refuse such a transfer to an employee if it is impossible to perform remote work, taking into account the employee's job function, and also if the employee did not provide facts confirming that discrimination, sexual harassment or other forms of violence had taken place;
7. at the time of the threat of the spread of an epidemic, pandemic, the need for self-isolation of an employee in cases established by law, and / or in the event of a threat of armed aggression, natural or man-made disaster, or emergency of other nature , remote work may be introduced by order (decree) of the owner or his authorised body without the obligatory conclusion of a labor contract for remote work in writing;
8. pregnant women, workers with a child under the age of three or caring for a child in accordance with a medical report until they reach the age of six, workers with two or more children under the age of 15 or a child with disabilities, parents of a person with disability from childhood of group I, subgroup "A", as well as persons who have taken care of a child or a person with a disability since childhood of group I, subgroup A "" can work remotely, if possible, given the work performed, and the owner of an enterprise, institution, organisation or an authorised body has the appropriate resources and means for this.

At the same time, it should be noted that the above-mentioned norms and features apply to the working regulations of both citizens of Ukraine and foreign workers.

Taking into account that the new law has been in effect for less than a month, the law enforcement practice of applying the legal regime of home and telecommuting is extremely insignificant (not to mention the judicial practice of interpretation and application of the above norms, which is not yet available at all).

At the same time, the consolidation of the above institutions in the Labor Code of Ukraine, of course, has become an adequate response of the legislator to modern challenges.

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