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The new Labor Code extends the possibilities for dismissal of a person. What grounds for dismissal does the new Code propose?

The Draft of the new *Labor Code* No.1658, approved by the Ukrainian Parliament in its first reading, provides for a number of new grounds for dismissal of employees. These include the following:

- 1) disclosure of state secrets, commercial or other information protected by the law, which became known to an employee who signed an obligation of non-disclosure or whose employment agreement included a non-disclosure condition;
- 2) breach of rights of shareholders (participants) of a company by that company's director or mem-

bers of the company's management body;

3) termination of employment due to reasons beyond the control of the parties, including warfare, catastrophe, natural disaster, epidemic or other extraordinary circumstances;

4) termination of employment of a minor at the request of his/her parents or persons replacing them, as well as respective bodies in certain cases;

5) gross violation by an employee of requirements of labor protection, fire safety or traffic safety if

any of that results in accident or creates a real danger of relevant consequences, which must be properly confirmed.

According to the new Draft *Labor Code* a single mother can be dismissed for improper performance of her labor duties or absence at work for more than four consecutive months due to sickness or unknown reasons. The *Labor Code* also provides for the possibility of suspension of labor relations, including when such an agreement is struck between an employee and his/her employer.



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Are possibilities for abuses by employers possible in the new Code?

The commented Draft, obviously, contains many novelties that would have to be directed at strengthening the protection of employees' rights and attaining a balance of interests in labor relations. However, the very first articles of the Draft *Labor Code* trigger some concern. Thus, Articles 22 and 23, which enshrine the rights of the employee and duties of the employer, respectively, contain an exhaustive list of the latter. This approach a priori creates possibilities for abuse by the employer, as in the event of a dispute regarding the

rights or duties that are not directly enshrined in the Code, the employer will be formally right when referring to their absence. It should be noted that it is the formal approach in Ukrainian realities that is, unfortunately, quite popular in the context of the substantiation of a case in court. In addition to the above, another possible area for abuse is control by the employer of workers with technical means (audio, video, GPS-tracking). Thus, the Draft allows for the use of said means in the case of "specific features of production",

while it does not explain what features are meant, nor does it give any examples to be used in the application of analogy. In such circumstances, the employer has discretion to interpret the relevant provision and to exercise control with the help of technical means, even where there are no proper grounds for this. Also, abuse may occur when employers practice overtime, because now it is enough for the employer to inform the trade union organization, while previously it was necessary to obtain the permission of the latter.



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The new Labor Code brings in the concepts of working from home and a flexible working schedule. What do the given novelties propose? What risks can they carry for employers and hired employees?

The Draft *Labor Code* introduces into Ukrainian labor law the concepts of working from home and a flexible working schedule for any categories of employees. These developments meet the current global trend (already widespread in the EU and US) of addressing the problem of the life/work balance. The idea behind this global move towards flexibility lies in that meeting the employees' needs makes them happier. This boosts the employees' productivity and efficiency and, as such, makes them more valuable for the employer.

Implementing the above options by Ukrainian companies will require a larger input from their HR and other managers as such flexibility does not fit all for various reasons (e.g. job duties, specifics of work, employee personality). Working from home/flexible working schedule are suited best, e.g., for parents with children of the preschool age, top managers, and employees of creative professions. However, even among them there will be someone requiring close supervision or needing the workplace

environment with strict rules so as to get the work done.

The employer has to consult with its HR manager/ employee's direct supervisor to decide on whether working based on these flexible terms can be justified. More so, terms/ conditions of such work have to be carefully written down in respective employment agreements/company policies to mitigate possible risks (e.g. claims of working extra hours, quality of work, privacy/data protection, confidentiality/commercial secret disclosure concerns).