



SUMMARY

Labour legislation is vital in achieving a balanced development of both economic efficiency and the well-being of the population as a whole. Reform of the Labour Code must therefore remain a key priority.

- Labour law reform must be guided by ILO Conventions and the relevant directives of the EU Association Agreement and based on the principle of social dialogue and tripartism.
- The fundamental rights of workers to join organizations of their choosing and of collective bargaining must be guaranteed. Pre-eminence must be given to trade unions and their prerogatives.
- Legal pathways for labour disputes should be provided and worker's challenges to their employment status simplified.
- Employment relationships should be primarily defined by the facts relating to the performance of work and the remuneration of the worker.
- Principles on prohibition of discrimination and the promotion of gender equality must be enshrined and reinforced by legal tools to ensure effective implementation.
- Grounds that shall not constitute valid reasons for termination of employment must be clearly indicated and complimented by procedural safeguards and impartial processes for appeal.
- The mandate of the labour inspectorate requires strengthening and needs to include all fundamental principles and rights at work.

OVERVIEW

The current Labour Code was adopted in 1971. A process of gradual amendment since Ukrainian independence has produced a hybrid of legal standards. They partly reflect modernized pre-independence features of industrial relations as well as market-based principles. The coexistence of various legislative acts, some inscribed on paper but not functioning in practice, prevents coherent application. This concerns in particular the protection of workers' rights, especially in light of Ukraine's large share of undeclared and informal work as well as emerging new forms of employment. The 2002 Concept of Labour Law Reform recognized the problem of gradual amendment and stipulated the development of an entirely new Labour Code. Draft Labour Codes were introduced on this basis in 2003, 2009, and 2015, but were not enacted. In February 2020, the Parliamentary Committee on Social Policy and Protection of Veterans' Rights as part of a tripartite working group proceeded with further labour law elaboration selecting draft law 2708 as basis for future reform. The European Trade Union Confederation (ETUC), the International Trade Union Confederation (ITUC) and the European Public Service Union (EPSU) had already been highly critical of draft law 2708. They joined Ukrainian trade unions in criticizing the lack of consultation, social dialogue and public debate and voiced strong concerns over its compliance with ILO Conventions and the EU Association Agreement. A fifteen-member "tripartite-plus" working group was then set up to complete a full review and prepare a revised draft. The working group agreed that draft law 2708 requires re-codification and substantial improvements, and must be aligned with relevant ILO Conventions and EU Directives. However, after the resignation of the Prime Minister Oleksii Honcharuk's Cabinet of Ministers, draft law 2708 was repealed. In May 2020 the Committee took the decision to resume the work on labour law reform, based on the tripartite-plus working group formula and with the aim to develop a codified legal act. It also recommended other related draft-laws for Parliamentary vote, including draft-law 2681 concerning trade union activity.





SUSTAINABLE DEVELOPMENT GOALS

A fair and balanced Labour Code and other special laws are a powerful driver for achieving a wide range of Sustainable Development Goals (SDG), by making a positive contribution to economic growth and development, and by addressing adverse impacts on people, the environment and society. In this form it helps to reduce poverty levels, provides an important framework for targeted social assistance programs to the poor, and increases the resilience of socially vulnerable groups (SDG1). Labour legislation is central in advancing gender equality, equal representation at all levels, and to expand economic opportunities for women (SDG 5). It aids sustained, inclusive and sustainable economic growth, self-realization through productive employment, decent work for all, and a safe and secure working environment for all women and men (SDG 8). A fair and balanced Labour Code reduces inequality, by preventing discrimination, by promoting remuneration policies based on equality and fairness, and by advancing income growth of the least well-off (SDG 10). Well-managed labour relations promote peaceful and inclusive societies for sustainable development, provide access to justice for all and help to build effective, accountable and inclusive institutions (SDG 16).

POLICY CONSIDERATIONS

- ILO Conventions and the EU Association Agreement provide clear guidelines for future reform. Ukraine has ratified 71 ILO Conventions of which 63 are binding, including all eight Fundamental Conventions and all four Governance Conventions. The ILO provided a total of 53 recommendations on the 2015 draft Labour Code, and three technical notes on draft law 2708 to this effect. These remain relevant for ongoing reform that must resume at the earliest.
- As the legal drafting resumes after the change of the Government, it is important the process is anchored on effective consultations with representative employers' and workers' organizations. Only the principle of social dialogue and tripartism can ensure broad societal support. Labour law reform must be in line with international labour standards, EU Acquis and best international practices.
- The fundamental rights of workers must be guaranteed. This concerns first and foremost worker's rights to join organizations of their choosing and of collective bargaining, including those self-employed. Pre-eminence must be given to trade unions and their prerogatives.
- A reformed Labour Code must ensure that individual labour disputes can be brought before court, also by labour authorities and/or unions on a worker's behalf. Worker's challenges to their employment status must be made easier and less costly, by placing the proof of burden on the employer, by simplifying procedures, and by reducing risks to workers against potential retaliation.
- While an employment contract should be considered as the primary legal proof, the existence of an employment relationship should be defined primarily by the facts relating to the performance of work and the remuneration of the worker. A regulatory framework on the issues of outsourcing and temporary agency work should be developed in line with best international practices.
- A reformed Labour Code must enshrine the principles of equal treatment, protect the rights of vulnerable groups of employees, and prohibit all forms of discrimination. This concerns in particular prevalent gender discrimination that severely limits female labour market participation and curtails equal access to quality employment and reintegration into the workplace. A reformed Labour Code must end gender-based occupational





segregation, effectively protect women against violence and harassment, and eliminate discrimination in the context of pregnancy and maternity.

- A reformed Labour code must actively promote gender equality and in compliance with progressive international mechanisms in this area. Critical to this end is the promotion of shared domestic responsibilities, and the concept of work of equal value to effectively eliminate discrimination and progressively reduce the gender pay gap. A reformed Labour Code must include mechanisms that incentivize the employment of persons with disabilities.
- A reformed Labour Code must clearly indicate which grounds shall not constitute valid reasons for termination of employment, place the burden of proof on the employer, and provide procedural safeguards and processes for appeal by an impartial body. The provision of collective redundancy dismissal must be clearly defined and involve notification to a relevant authority.
- A reformed Labour Code must emphasize employer's obligations. These concern in particular the obligation to provide detailed contractual information, the prevention of and protection against occupational risks, and the obligation to protect employee rights of privacy.
- Provisions concerning working hours, including those of annual leave, must be clearly defined and organized.
- A reformed Labour Code should introduce collectively negotiated, legally binding wage floors to prevent exploitation and prevent in-work poverty.
- A reformed Labour Code must ensure that young people in Ukraine will not carry out an economic activity at an age lower than sixteen.
- A reformed Labour Code must strengthen the mandate of the labour inspectorate. This should include, as a matter of priority, all fundamental principles and rights at work, and the right to facilitate legal challenges and impose penalties.

