EVERLEGAL

4 Rylskyi Lane, Kyiv 01001, Ukraine
T. +38 (044) 337 00 16, F. +38(044) 337 00 18
www.everlegal.ua

1. **Can an employer on its own initiative dismiss a mobilised employee during martial law?**

   No. According to Part 3 of Article 119 of the Labour Code of Ukraine (the "**Labour Code**"), a mobilised employee (until the end of a special period or until the day of an actual dismissal of such an employee from military service) retains the place of his/her work, position and average salary. The average salary of such an employee has to be calculated in accordance with the Procedure for Calculating the Average Salary, approved by the Resolution of the Cabinet of Ministers of Ukraine № 100 dated 8 February 1995 (as further amended).

   According to Article 1 of the Law of Ukraine "On Defence of Ukraine", a special period commences from the moment of announcement of mobilisation or martial law in Ukraine and covers mobilisation time, wartime and partial reconstruction period after the end of hostilities. On 24 February 2022 the President of Ukraine by his Orders imposed martial law and declared mobilisation.

   There is a special ground in the labour legislation of Ukraine, which provides for the possibility of dismissal of an employee in case of enlistment in the military (paragraph 3 of Part 1 of Article 36 of the Labour Code), but it does not apply during a special period.

2. **Can an employer dismiss a mobilised employee if the fixed-term employment agreement (contract) expires during martial law?**

   No. During the special period, such an employee retains the place of work, position and average salary (part 3 of Article 119 of the Labour Code), even if the term of the employment agreement (contract) has expired. Once the special period ends, the employer has the right to dismiss such an employee.

3. **Can an employer dismiss a mobilised employee due to liquidation of the company?**

   Yes. The liquidation of the company constitutes the ground for dismissal, inter alia, of mobilised employees (paragraph 1 of Part 1 of Article 40 of the Labour Code).

   Ukrainian law does not oblige the employer to further employ such dismissed mobilised employees. However, the employer is still obliged to ensure other labour guarantees provided for in the event of dismissal of employees due to company's liquidation (for example, employer's obligation to notify

4 Rylskyi Lane, Kyiv 01001, Ukraine
T. +38 (044) 337 00 16, F. +38(044) 337 00 18
www.everlegal.ua

employees of dismissal in two months prior to such dismissal, to submit the information on the planned mass dismissal to local authorities of the State Employment Service of Ukraine, etc.).

4. **What actions should the employer take in case of mobilisation of the company's director?**

   The director has to issue an order on transfer of the director's powers to the deputy director or other employee for the period when the director is absent, if the company's charter (articles of association) provide for the possibility of transferring powers by the director. If such an employee (deputy director) is not registered as an authorised person (a "signatory") in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations (the "Register"), it is advisory to additionally issue a power of attorney to such an employee (deputy director).

   If the company's charter (articles of association) does not provide for the director's right to transfer powers and the relevant employee (deputy director) is not recorded as an authorised person (a "signatory") in the Register, the transfer of the director's powers to another employee (deputy director) will require a decision of the general (shareholders') meeting or supervisory board (if the supervisory board has the relevant authority to approve such decisions). If possible, it is advisable to record information on such an employee (deputy director) as an authorised person (signatory) in the Register.

   The transfer of the director's powers to the other employee (deputy director) does not require a legal change of director or introduction of the changes to the information on the director in the Register, because the mobilised director remains employed and retains his position.

5. **Can an employer dismiss an employee who has entered into a territorial defence under a volunteer contract?**

   No. Volunteers of territorial defence (who has entered into the relevant contract) retain their work places, positions and average salaries (Part 3 of Article 119 of the Labour Code). If the territorial defence volunteers have not entered into the relevant contracts, the said guarantees of labour legislation do not apply to them.

6. **Can an employer dismiss an employee for "absenteeism" because of the employee's absence at work due to hostilities and related circumstances?**

   No. Dismissal of an employee who does not show up at work due to hostilities and related circumstances for "absenteeism" is prohibited (paragraph 4 of Part 1 of Article 40 of the Labour Code).

   The law does not explicitly prohibit the dismissal for "absenteeism" of an employee who does not show up for work in an area where there are no active hostilities. However, dismissal for "absenteeism" is possible when there is no "valid reason" for employee's absence at work. Although currently there is no official interpretation of "valid reasons" in the context of martial law in Ukraine, the State Labour Service of Ukraine does not recommend dismissing employees for "absenteeism" during the martial law.

7. **What actions should an employer take if an employee is absent at work due to hostilities and related circumstances?**

4 Rylskyi Lane, Kyiv 01001, Ukraine
T. +38 (044) 337 00 16, F. +38(044) 337 00 18
www.everlegal.ua

If employees have moved or gone abroad, are volunteering or cooperating with the territorial defence(but have not signed a contract of the volunteer of territorial defence), or are otherwise unable to perform their labour duties due to other circumstances related to hostilities, the employer has the following several options for formalising the status of such employees:

if the employer is NOT aware of the exact reasons of the employee's absence

- to record the absence of the employee as "absence for unknown reasons" (Ukrainian symbol "НЗ") or as "other reasons for absence" (Ukrainian symbol "І") and adjust the timesheet accordingly after establishing that the reasons for absence were valid;

if the employer is AWARE of the exact reasons of the employee's absence, but the employee is unable to perform his/her labour duties

- to formalise paid leave (annual, social) or unpaid leave (under agreement of the parties or mandatory unpaid leave in accordance with the list and terms of such leave provided by law);

if the employer is AWARE of the exact reasons of the employee's absence and the employee is fully or partially able to perform his/her labour duties

- to formalise the remote work of such employee;
- to formalise the part-time work of such employee;
- to set a flexible work schedule for such employee.

8. What actions should the employer take if the company stops working due to hostilities?

The employer must declare a business interruption (down time) (Part 1 of Article 34 of the Labour Code). During the downtime the employer has to pay salaries to the employees in the amount at least two-thirds of the tariff rate set for the employee category in accordance with Part 1 of Article 113 of the Labour Code.

In case of downtime, the employer may, taking into account the specialty and qualifications of employees and upon their consent, transfer them:

- for another job at the same enterprise, institution, organisation for the entire period of downtime;
- to another enterprise, institution, organisation, but in the same area for up to one month.

Even during downtime, the mobilised workers and / or volunteers of the territorial defence (under the contract) retain their work places, positions and average salary until the end of the special period.

Yevheniy Deyneko
Managing Partner

deyneko@everlegal.ua

Andriy Olenyuk
Partner

olenyuk@everlegal.ua

Yuliia Kylchynska
Senior Associate

kylchynska@everlegal.ua

Olha Horodniuk
Associate

horodniuk@everlegal.ua

CONTACTS:

+380 44 337 0016
Ukraine, Kyiv,
4 Rylskyi Lane
6th floor

hello@everlegal.ua
www.everlegal.ua