



HR Audit by the Ukrainian State Employment Service be prepared!

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In general, an imposition of the financial fines on employers for violations of the employment and labor legislation is respectively presumed by the Law of Ukraine "On Employment of Citizens" (№ 5067-VI dated 05.07.2012) and by the Labor Code of Ukraine (the LCU).

The fines presumed by the Law № 5067 applied since August 10, 2013, i.e. after the Resolution of the Cabinet of Ministers of Ukraine (the CMU) "On the procedures of imposition of the fines for violations of the legislation on employment of citizens" (№ 509 dated July 17, 2013) came into force. The fines vary from 2 to 20 min monthly salaries and depend on the amount of the min. monthly salary effective as at the date when the violation identified.

The fines presumed by the LCU (Article 265) for violations of the labor legislation were implemented in 2014 by the Law of Ukraine "On reformation of the social insurance and legalization of wages" (№77-VIII dated December 28, 2014). The fines should have been applied since January 1, 2015. Nevertheless, there were no procedures to apply the fines. In February 2016 the CMU issued the Resolution (№ 55 dated February 03, 2016), which extended the application of the Resolution № 509 on imposition of the financial fines are presumed by the LCU. As a result, since February 10, 2016 Ukraine has comprehensive regulation regarding imposition of the financial fines on employers for the wide scope of violations of labor legislation.

The fines for the violations presumed by the LCU vary from 1 to 30 min monthly salaries. Thus, maximum fines (i.e. UAH 43,500) presumed for: (1) an admission of an employee to work without relevant employment agreement (contract); (2) fictitious part-time employment; and (3) nonpaying payroll-related taxes. Comparatively weighty fines (10 min salaries or UAH 14,500) may be applied for: (1) non-compliance with the legal guarantees and privileges presumed for the conscripted employees and (2) noncompliance with the minimum state guarantees on the labor payments.

The facts that the fines have to be applied for *each single violation* and that such applying does not exempt from administrative liabilities (can be up to 1,000 non-taxable min.) as well as rather aggressive approach of the state fiscal authorities make critical the violations of employment/labor legislation for each local company. The risk is even higher that this may seems. This is due to the uncertainty of the relevant Ukrainian legislation and its rather free interpretation by the state fiscal authorities.

For instance:

- According to the Article 24 of the LCU "*Conclusion of employment contract*", an employee cannot be admitted to work without relevant employment agreement (contract) arranged by issuing of the relevant employment order or instruction..., **and** without proper preliminary notification of the tax authorities.

- Given this “dual” requirement above the state fiscal authorities insist on that any employment contract shall be treated as properly concluded if its conclusion includes 2 steps, i.e. (1st) conclusion of the employment contract and (2nd) informing tax authorities regarding relevant employment. Without informing of the tax authorities the employment contract cannot be treated as properly concluded. Correspondingly, both financial fines and relevant administrative penalties shall be applied.
- It appears that the “dual” approach above has no sense. Conclusion of the contract and informing tax authorities are two separate requirements and not performing of one of them does not automatically lead to treating second one as improperly performed. This business oriented approach was recently confirmed by the Vinnitsa regional labor authorities.

In spite of the fact that all of the introduced responsibilities deserve attention, it appears that in particular the responsibilities presumed for the *“noncomplying with the minimum state guarantees regarding the labor payments”* are mostly risk bearing. This is due to the fact that minimum state guarantees include rather widest spectrum of the guarantees, namely: (1) paying of wages two times per month and in the amount not lower the minimum rate for full worked time; (2) salary indexation presumed by the law; (3) proper payment for work during holidays, non-working days and weekends; (4) annual leave; (5) benefits for pregnant women and women with children under three years; etc.

Given the above it seems reasonable for every company and representative offices in Ukraine to check internal labor-related instructions, procedures, approaches regarding their compliance with the Ukrainian labor legislation. Understanding of the standard scope of the labor audit may be received from the standard form of the finalizing Act, which was adopted by the Ministry on Labor of Ukraine in 2012 (Order № 390 dated July 2, 2012).

In addition, it may be reasonable to discuss existing procedures with the employees prior to the visit of the state authorities and consider how to arrange them properly, if any inaccuracies or misunderstandings identified. From the existing practice it seems that the state authorities are mostly relay on the available documentation and information received from the employees when provide the labour audit.

In any case, better be prepared for a labor audit than to appeal the fines and administrative penalties, which may result from such audit.

The information above is general in nature and does not highlight the situation of any particular company or individual. Although no one should act and rely upon such information without appropriate professional advice provided after detailed investigation of the concrete situation.

In case of need for additional advice on the issues above, please contact us.

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Who we are?



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