

CIVIL AND LABOR LAW

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LEAVES UNDER LABOR LEGISLATION OF UKRAINE

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Abstract.

Purpose: the purpose of the present scientific work is to study the legislation of Ukraine on holidays and the use of separate articles of the Law of Ukraine "On leaves", which contain blanket norms. The system of sectoral legislation is considered, and the frames of its use are defined. **Methods:** optimization of legal enforcement of labor law norms, which regulates the procedure for granting leaves. **Results:** levels of legal regulation of leaves are determined and separate sub-legal acts are analyzed, which is important for law enforcement. **Discussion:** international normative acts, national legislation on the provision of certain types of leaves.

Keywords: annual leaves, additional leaves related to training, sabbatical leave, leave for training for and participation in competitions, social leaves, leave without pay protection.

1. Introduction

Current legislation of Ukraine on leaves consists of the Constitution of Ukraine (Article 45), the Law of Ukraine 'On leaves' [1], Chapter V of the Labor Code of Ukraine, special laws, by-laws, in particular the Decree of the Cabinet of Ministers of Ukraine of 19 January 1998 №45 'On approval of the conditions, duration, procedure for granting and payment for sabbatical leaves', the Decree of the Cabinet of Ministers of Ukraine of 1 June 2011 №565 'On approval of procedure for granting and payment for the leaves to train for and participate in national and international sports competitions' and other regulations.

2. Problem and its connection with scientific and practical tasks

One of the important issues that needs to be solved is to bring Ukrainian legislation On leaves in line with international and European standards. In modern Ukraine there are complex processes of reforming the legal system. The important part of them is the changes taking place in labor law: the adoption of the new Labor Code of Ukraine should

promote the protection of human rights in the field of labor, its norms must correspond to the realities of modern life and take into account the European tendencies in harmonizing labor relations.

An analysis of the legislation of foreign countries On the leaves gives grounds to conclude that the normative legal acts of these countries differ in structure, types of leaves, conditions of occurrence and the process of implementation of the right to leave. For most countries of Western Europe it is common to have centralized leaves regulation, in other countries, including in the US, the local method prevails. In my opinion, the legal regulation of leaves in Ukraine must be carried out by combining both methods, because in this way, it is possible to avoid all kinds of contradictions. The rules on the minimum length of leave, types of leaves, salary preservation conditions, procedures for granting and guarantees for a certain category of workers should be fixed at the central level, such as in Denmark, Germany, and Austria. Other features that relate to the specifics of work at a particular enterprise, the length of the leave taking into account all factors, can be defined both in a collective

agreement, and in the employment agreement or in the contract.

3. Analysis of result research

The Constitution of Ukraine establishes the right of everyone who works to rest, provided with the provision of weekly days-off, as well as paid annual leave, the establishment of a shorter working day for certain occupations and productions, reduced working hours at night. The need to provide an employee with annual leave is due to the peculiarities of the human body, which requires rest for the restoration of work capacity, improvement and strengthening.

The following scientific problems need to be solved and rethought: establishing relationship between adjacent with annual leaves phenomena; definition of the notion of annual leave and certain types of leaves; outline of the boundaries of unity and differentiation of the legal regulation of annual leaves; making out the classification of leaves; studying the mechanism of realization of the right to leave etc.

4. Presenting main materials

It should be noted that the legislation of Ukraine in general meets international standards, in particular International Labour Organisation (ILO) Conventions №52 and №103 and determines the duration, the procedure for granting of annual leaves. Some ILO Conventions, in particular ILO Convention №140 on the paid educational leaves of 5 June 1974, which was ratified by Ukraine only on 26 September 2002, has been implemented into national law by amending the Law of Ukraine 'On leaves' by a separate article 15-1, according to which the leaves connected with the trade union training are provided to persons chosen to the elected bodies of enterprises, institutions and organisations with the duration of up to six calendar days.

Article 4 of the Law of Ukraine "On Leaves" envisages the following types of leaves:

- 1) annual leaves:
 - main holiday;
 - additional leave for work in harmful and severe working conditions;
 - additional leave for special nature of work;
 - other additional leaves envisaged by the law;
- 2) additional leaves in connection with training;

3) sabbatical leave;

3-1) leave for training for and participation in competitions.

4) social leaves:

maternity leave;

leave to care for a child under the age of three;

leave in connection with adoption of the child;

additional leave to employees who have children or adult child – disabled since childhood of subgroup A of group I;

5) leave without pay protection.

The legislation, collective agreement, contract and employment agreement may establish other types of leaves.

In accordance with Part 1 of Article 6 of the Law of Ukraine 'On leaves' annual main holiday of not less than 24 calendar days is granted for the year worked. For some categories of employees annual main extended leaves are set (i.e. more than 24 calendar days). Their duration depends on specific working conditions (intensity, complexity, special climatic conditions, etc.), employee's age and health. Thus, the extended leaves, in particular, are granted to the employees who are under 18 years of age – 31 calendar days (Part 8 Article 6 of the Law of Ukraine 'On leaves'). Other categories of people – state officials, MPs, judges, scientific, educational and teaching personnel, journalists, medical workers are entitled to annual leave of extended duration in accordance with specific regulations, including the Law of Ukraine 'On State Service', 'On judicial system and status of judges', etc.

The total duration of the annual main and additional leaves may not exceed 59 calendar days, and for workers employed in underground mining work – 69 calendar days.

Therefore, the duration of annual main holiday in Ukraine is established by laws and other regulations and depends on the category of workers or the occupied position.

The Law 'On leaves' envisages additional leaves related to working conditions and the special mode of operation. Such leaves are aimed at comprehensive health care of employees who work in harmful and severe working conditions. Their purpose is to compensate the negative harmful effects on human body by special features of production

process. For such employees a number of benefits are envisaged aimed at protecting working conditions and other aspects of life. One of them is the provision, as compensation, of additional leave to restore health.

According to Articles 7 and 8 of the Law 'On leaves' additional annual leaves are granted for work: 1) related to harmful and severe working conditions; 2) for the special nature of work, namely, if the work is connected with the increased neuro-emotional and intellectual workload or performed in special natural geographical and geological, and risky conditions for health and to employees with nonstandard working day.

According to Article 7 of the Law of Ukraine 'On leaves', the annual additional leave for work in harmful and severe working conditions with the duration of up to 35 calendar days is granted to workers employed in jobs related to adverse effects of harmful factors on health according to the List of productions, workshops, professions and positions, approved by the Cabinet of Ministers of Ukraine.

The exact duration of this leave is set by collective or employment contract, depending on the results of assessment of working places on conditions and time of employment of the worker in these circumstances.

The List of productions, workshops, professions and positions, being employed in which gives to workers the right to an annual additional leave for work in harmful and severe working conditions and for the special nature of work was approved by the Cabinet of Ministers on 17 November 1997 №1290 [2].

The law envisages the granting of additional leave for other reasons. Thus, Clause 8 envisages additional leave for special nature of work and its duration. The annual additional leave for special nature of work is granted to:

1) certain categories of employees whose work is connected with an increased neuro-emotional and intellectual workload or performed in the special natural geographical and geological conditions of increased risk to health – up to 35 days under the List of productions, workshops, professions and positions, approved by the Cabinet of Ministers of Ukraine;

2) workers with nonstandard working hours – up to 7 calendar days according to the List of productions, workshops, professions established by a collective agreement, contract.

In granting additional annual leave for nonstandard working hours it is necessary to take into account that long working hours – is a special mode of working time, which is set for certain categories of workers in case of impossibility to ensure the rationing of time of the production process. If necessary, this category of workers performs work beyond normal working hours and that work is not considered overtime.

Article 4 of the Law of Ukraine 'On leaves' establishes the norm according to which the legislation may establish other additional leaves. In particular, it concerns civil servants and participants of liquidation of Chernobyl catastrophe. Thus, civil servants with working experience of civil service for more than five years are granted additional leave with the duration of one calendar day. Starting from the sixth year of state service this leave increases per one calendar day for each year thereafter. The duration of the additional leave may not exceed 15 calendar days. The procedure for granting of such leave is regulated by the Decree of the Cabinet of Ministers of Ukraine [3].

Additional leave to citizens affected by the Chernobyl catastrophe, is granted according to paragraph 22 Article 20 and paragraph 1 Article 21 of the Law of Ukraine 'On the status and social protection of citizens affected by the Chernobyl catastrophe' [4] and entitles individuals classified as Category 1 and 2 to the use of an annual leave at a convenient for them time, as well as of additional pay-protected leave for a period of 16 calendar days per year. This leave is a guaranteed by the state benefit and therefore the employer must provide this right to the employee within a calendar year.

Law of Ukraine 'On leaves' envisages such type of leave as additional leave for training (Articles 13, 14 and 15).

Granting of such leave depends on the type of educational institution and its level of accreditation. Thus, based on the provisions of Articles 13, 14 and 15 it can be seen that such leave is granted in case of study in secondary schools, in vocational and

higher educational institutions, postgraduate education and being a researcher. Thus, additional leaves in connection with studying are granted in the case of acquiring education in a particular educational institution. Alongside Articles 14 and 15 of the Law 'On leaves' envisage the granting of such leave to those employees who successfully study without interrupting their work.

Law of Ukraine 'On leaves' envisages sabbatical leaves as well. Section III of Article 16 of the Law 'On leaves' and the Decree of the Cabinet of Ministers of Ukraine of 19 January 1998 №45 'On the approval of the terms, duration, procedure for granting and payment for sabbatical leaves' [5] define prerequisites and the order of granting sabbatical leaves, circle of people who are granted it.

According to Article 16 of the Law sabbatical leave is granted to employees to complete dissertations, to write textbooks and in other cases envisaged by law.

From the aforementioned regulations it is clear that sabbatical leave is granted not to write a thesis but to complete work on it. In particular, according to the mentioned Decree of the Cabinet of Ministers to complete work on the thesis sabbatical leave is granted for up to 3 months, and to get the degree of Doctor of Science – up to 6 months and for writing textbooks or scientific work – up to 3 months. The conditions for granting a leave are defined – a successful combination by an employee of his main job with a research activity.

Differentiation of leaves is connected with the changes that were adopted according to the Law of Ukraine of 17 November 2009 №1724-VI, due to which the Law of Ukraine 'On leaves' acquires a new article 16¹ – leave for training for and participation in the competition. The procedure for granting and payment for the leave is stipulated in the Resolution of the Cabinet of Ministers of Ukraine of 1 June 2011 №565 [6]. This Procedure defined the mechanism of granting, payment and duration of leaves to the employees of enterprises, institutions and organisations irrespective of type of ownership, at the place of the main job who: 1) systematically go in for certain sports and participate in national and international competitions; 2) are included into the national teams of Ukraine. The

norms of this Procedure shall not apply to members of regular national sports teams of Ukraine and employees of law enforcement agencies, the Armed Forces and other military formations, of sports organisations due to their functional responsibilities involved in international competitions in sports. The duration of such leave shall not exceed 40 calendar days per year and includes the time required to travel to the venue of sporting events and a trip back.

These leaves are granted to train for and participate in national and international sporting events if they are included in the Common Schedule of fitness and sports activities of Ukraine for the respective year, based on the application of the employee and the letter of call to the relevant sports competitions from the State Service of Youth and Sports. Leaves can be granted to the employee in parts, which must be specified in the letter of call, both as a whole and separately from other main or additional leaves envisaged by legislature and are registered by the order of the director of the enterprise, institution or organization.

The employee who is on this leave retains the guarantees envisaged by labor legislation of Ukraine – his place of work (position) is protected for him. Payment for the above leaves to employees is effected at the expense of enterprises, institutions or organizations as well as individual entrepreneurs who employed such amateur sportsmen under an employment contract.

A relatively new provision in the Law of Ukraine 'On leaves' is an Article 16-2 which establishes the right to additional job-protected leave for certain categories of war veterans with duration of 14 calendar days per year.

In addition, types of social leaves were expanded. Thus, the Law of Ukraine 'On leaves' (the version of 15 November 1996) envisaged three types of social leaves: 1) maternity leave, 2) leave to care for a child under the age of three, 3) additional leave to workers with children. Upon the adoption of the Law of Ukraine of 23 September 2008 a new kind of social leave – leave for child adoption (Article 18-1 of Law of Ukraine 'On leaves') has appeared.

According to the innovations those who adopted a child out of orphans or children without parental care, aged three years, are granted a one-off paid leave in connection with the adoption of a child with the duration of 56 calendar days (70 calendar days – when adopting two or more children), excluding holidays and non-working days after the entry into force of the adjudication on adoption (if the adopters are spouses such leave is granted to one of them at their discretion).

Persons who have adopted a child have the right to leave for adoption provided that the application for the leave was submitted within three months after the entry into force of the adjudication on adoption.

Thus, the current legislation of Ukraine envisages four types of social leaves (Article 4 of the Law of Ukraine ‘On leaves’).

The duration of additional leaves to employees who have children or adult child – disabled since childhood of subgroup A group I (Article 19 of the Law ‘On leaves’) was changed several times and increased from five calendar days to 10 calendar days (so far). In addition, the Law of Ukraine of 19 May 2009 has increased the duration of leave to individuals who are entitled to this leave provided several grounds are present. In this case its total duration cannot exceed 17 calendar days.

Maternity leave according to Article 17 of the Law is granted on the basis of medical opinion, to women for a clearly defined period of time – up to 70 calendar days before the childbirth; after childbirth – 56 calendar days (70 calendar days – in the case of the birth of two more children) from the date of childbirth. Legislation of Ukraine envisages maternity leaves of other duration to certain categories of women, in particular to women affected by the Chernobyl catastrophe, before childbirth – 90 calendar days and after childbirth – 90 calendar days. Such leave is calculated in total and granted to women as a whole regardless of the number of days actually used before childbirth. In addition, to the individuals who adopted newborn children directly from the maternity hospital, the leave is granted from the moment of adoption with the duration of 56 calendar days (70 calendar days in case of adoption of two or more children). In the case of

adoption of a child (children) by both parents the leave is granted to one of the parents at their discretion.

Thus, the norm of the current legislation of Ukraine on the duration of maternity leave does not contradict international legal norms, but on the contrary, envisages the leave of a longer duration.

Another type of social leave in accordance with Article 18 of the Law is the leave to care for a child under the age of three. The peculiarity of the norm of this article is that not only women are entitled to such leave, but so do husbands, grandmother or grandfather or other relatives who are actually caring for the child.

One type of leave under the Law ‘On leaves’ is the leave without payment retention granted in the following cases: 1) mandatory (Article 25 of the Law); 2) by agreement (Article 26 of the Law). Such leave is granted to employees on the grounds envisaged by law preserving places of work (positions), but without payment retention during the working year.

Article 25 of the Law ‘On leaves’ contains a list of cases where the employer is obliged to grant such leave to the employee. This Article has been amended recently – the list of grounds for such leave under this Article has been expanded. Persons who previously were not eligible for this leave, under these changes are now endowed with this right:

– the mothers or other persons referred to in Article 18 and the first paragraph of Article 19 of this Law, in case the child needs home care – the duration specified in the medical opinion, but no longer than until the child reaches the age of six, and if the child has diabetes of type I (insulin-dependent) – no longer than until the child reaches the age of sixteen (Law № 2318-IV of 12. 1.2005);

– the mothers or other persons referred to in Article 18 of this Law, for child care up to 14 years during the period of the quarantine announced in the relevant territory (Law № 2169-VI of 11.5.2010);

– employees with children under the age of 18 years who enter educational institutions located in other areas – for the duration of 12 calendar days, excluding time required for a trip to the location of the institution and a trip back. If there are two or more children of the mentioned age such leave is

granted separately for accompanying of each child (Law № 2622-IV of 2.6.2005);

– to employees for the time of the anti-terrorist operation in the respective locality, taking into account the time required to return to the job, but no more than seven calendar days upon the decision to cease the anti-terrorist operation (Law № 121-VIII of 15.1. 2015).

Leave without payment retention by agreement under Article 26 of the Law ‘On leaves’ for family reasons is granted for not more than 15 calendar days.

5. Conclusions

Ukraine’s legislation on leaves was formed at the beginning of the XX century and certainly was exposed to Soviet legislation influence. Current legislation of Ukraine on leaves meets international standards and is characterized by the existence of the Basic Law ‘On leaves’; the presence of special laws, which define the duration of annual main holiday to certain categories of employees; numerous by-laws, mainly Decrees of the Cabinet of Ministers, which specify and give details of certain norms and provisions of the Law of Ukraine ‘On leaves’. A characteristic feature of the legislation of Ukraine on leaves is the differentiation of types and duration of leaves; specification of the circle of people eligible for a particular type of leaves.

Legislation of Ukraine on leaves is socially oriented, since it envisages four different types of social leaves, including maternity one granted to women and leaves to care for a child, which are granted to the child’s father and other relatives taking care of him.

Ukraine continues to work on the codification of labor legislation. With the adoption of the Labor Code certain changes in the legislation on leaves will take place too, in particular the norms of the current Law of Ukraine ‘On leaves’ will be fully reflected in the Labor Code. However, such changes will not substantially affect the types of leaves and the procedure for their granting. Those types of leaves that are already regulated by the legislation of Ukraine will be retained, while the draft of the Labor Code envisages incentive leaves that will be granted as an encouragement for the performance of state or social duties with partial or full payment retention.

References

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ВІДПУСТКИ ЗА ТРУДОВИМ ЗАКОНОДАВСТВОМ УКРАЇНИ

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Мета: метою наукової роботи є дослідження законодавства України про відпустки та використання окремих статей Закону України «Про відпустки», які містять бланкетні норми. Розглядається система галузевого законодавства та визначено межі його використання. **Методи дослідження:** оптимізація правозастосування норм трудового законодавства, що регулює порядок надання відпусток. **Результати:** визначено рівні правового регулювання відпусток та проаналізовано окремі підзаконні акти, що важливо для правозастосування. **Обговорення:** міжнародні нормативні акти, національне законодавство у сфері надання окремих видів відпусток.

Ключові слова: щорічні відпустки, відпустки у зв'язку з навчанням, творча відпустка, відпустка для підготовки та участі в змаганнях, соціальні відпустки, відпустки без збереження заробітної плати.

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ОТПУСКА В ТРУДОВОМ ЗАКОНОДАТЕЛЬНОМ УКРАИНЫ

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Цель: целью научной работы является исследование законодательства Украины об отпусках и использования отдельных статей Закона Украины «Об отпусках», которые содержат бланкетные нормы. Рассматривается система отраслевого законодательства и определены границы его использования. **Методы исследования:** оптимизация правоприменения норм трудового законодательства, регулирующего порядок предоставления отпусков. **Результаты:** определены уровни правового регулирования отпусков и проанализированы отдельные подзаконные акты, что является важным для правоприменения. **Обсуждение:** международные нормативные акты, национальное законодательство в сфере предоставления отдельных видов отпусков.

Ключевые слова: ежегодные отпуска, отпуска в связи с обучением, творческий отпуск, отпуск для подготовки и участия в соревнованиях, социальные отпуска, отпуска без сохранения заработной платы.