



The obsolete labor code dating back to 1971 offered good protection for employees under the Soviet planned economy. Despite 93 amendments since then, it is still not suited for the modern realities of either employers or employees. A proposed draft law doesn't change it much, while trade unions are lobbying for the old legislation to stay in place.

## Soviet social guarantees for employees scare away investors, often backfire

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Ukrainian labor legislation is paternalistic and focuses excessively on employee rights, many lawyers and employers say. And it also leads to unintended consequences.

Ukrainians earn less than any other nation in Europe, \$180 per month on average. Unemployment rose from 7.3 to 9.3 percent in 2014. More than half of the country's salaries are paid unofficially.

Part of the problem is the country's rigid labor code. It aims to protect employee rights, but actually pushes employers to seek

flexibility outside of the law. And employees who need the work often consent, according to Yuriy Kuzovoy, head of social policy department of the Ukrainian Employers' Federation, founded and led by industrial oligarch Dmytro Firtash.

The Labor Code of Ukraine, largely a holdover from Soviet days, causes potential foreign investors to balk. According to Oksana Voynarovska, a partner at Vasil Kisel & Partners, they are daunted by employee guarantees that give "certain categories of employees near-absolute immunity

from termination, including for poor performance, prohibiting business trips even if the employee consents... and restrictions on over-time work.”

Shareholders also face problems with Ukraine’s top managers, who are protected by the employment law, making it difficult to dismiss them or to hold them accountable for bad managerial decisions, Illya Tkachuk of Gide Loyrette Nouel says. In many EU countries executives are not employees of the company, but rather work under a service agreement.

The current labor code was adopted in 1971 and was very effective in protecting employees in a planned economy of USSR, according to Voynarovska. At the time, the state was both guaranteeing and bearing the costs of “safety nets” for its workers.

“However, this approach does not work nearly as well in a modern market economy,” Voynarovska says. Private businesses end up paying the price for state guarantees, which distort normal market relations.

To overcome labor-code restrictions, employers often rely on unregistered employees, or are creative enough to have new employee sign an undated resignation letter before signing a contract. In such cases, it is the employee who suffers from the rigid protection policy, Kuzovoy says.

A market economy implies flexibility and allows for employer-employee negotiations, which the current legislation thwarts.

There is no flexibility regarding working hours and days off, for example, under the existing code. Women are not allowed to work night shifts except within certain industries, while those with children under the age of three cannot work night shifts at all – even if they want to.

There have been efforts to make the labor codes more flexible. A new draft law, proposed by lawmaker Mykhaylo Papiyev of the Opposition Bloc, is currently being reviewed by deputies after it has been rejected twice since December 2014. It gives employers more rights and discretion in terms of supervising employees, remuneration, dismissal, suspension, and lay-offs, while also keeping many current protective provisions for employees, says Volodymyr Yakubovskyy, a partner at Nobles.

But trade unions are happy with the existing laws. “In the current crisis and circumstances in the country, it’s not worth changing the labor code, because it will not be in favor of workers,” Natalia Levitska, deputy head of the Free Trade Unions Confederation, says. She worries that changes will limit benefits and compromise the rights and role of trade unions.

“A change of legislation in favor of employers will not guarantee the shift to more legal employment,” Levitska adds.

But many businesses are pushing for the draft law.

“The (new) labor code, if adopted in the current draft, is a step forward in the regulation of employment relations and in many aspects it reflects the needs of businesses,” says Nataliya Nakonechna, senior associate with CMS Cameron McKenna.

Others argue that the draft law does not go far enough.

“Generally speaking, the draft code is not changing anything,” Voynarovska says. “We are waiting for a radically different European document that would enable us to be more flexible and get away from the stern wording of a country with a planned economy.”

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#### Main changes in the draft labor law

- All employment agreements to be in writing
- Flexible regulations for working off premises
- No job probation period for men with children under three and for pregnant women.
- Breach of non-disclosure obligations to be grounds for dismissal.
- Background checks allowed, subject to applicant’s consent.
- The introduction of a six-month probation period for top management.
- Technical surveillance to be allowed, subject to notification.
- Single mothers no longer protected from dismissal for poor performance.
- Severance pay to be based on employee’s time within a company.
- Remuneration for overnight work to be paid in an amount not less than 30 percent of the regular rate.
- Clearer rules for suspension from work duties.
- Annual paid-leave entitlement to be increased from 24 to 28 calendar days

Sources: CMS Cameron McKenna, Nobles, and Vasil Kisel & Partners



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