

Opposing Labor Reform, Ukraine's Unions Speak Out

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In the closing days of 2019, the Zelenskyy cabinet quietly passed along a new draft law to the country's parliament. The draft bill – simply entitled 'On Labor' – contains 98 articles, and is intended to replace the country's Labor Code, in use since its ratification by the Ukrainian SSR in the 1970s. The bill describes a nearly wholesale restructuring of the Ukrainian labor market, and in many cases, takes obvious inspiration from the labor practices of the United States of America.

These changes, rarities on the European continent, have inspired fierce resistance amongst labor advocates and trade unions, who have staged rallies in protest of this law. Hromadske has taken a look at the biggest changes this reform will introduce for Ukrainian workers, and what the unions think.

Introducing At-Will Employment to Ukraine

The most prominent change, and the one that is likely to impact the largest amount of workers, is the introduction of what is known as "at-will" employment into Ukrainian law. At-will employment takes its name from the ability of the employer to fire an employee "at-will", that is, without having to prove just cause.



Protesters against the labor reform stand outside the government offices in Kyiv, Ukraine on January 15, 2020. Posters read "We won't let our labor rights to be violated" and "I am against the anti-human draft bill "On Bill." Photo: Vladyslav Kudryk

At-will employment is most popularly used in the United States, where a majority of states are at-will, and workers have few protections against what they might consider is an unjust dismissal.

An employer in an at-will labor system can fire an employee for any and all reasons, aside from those directly proscribed by law – typically, anti-discrimination laws that are meant to protect minorities and other marginalized populations from being fired for reasons directly relating to their minority or marginalized status.

However, George Sandul, a labor lawyer working for the Labor Initiative NGO, says that at-will employment will de facto make it impossible for Ukrainians to contest their dismissal, even if that dismissal carries a discriminatory nature – on the basis of religion, or pregnancy, for example.

"It introduces what is called 'at-will employment.' In other words, an employer can fire an employee simply because they want to. If right now this is simply impossible...there have to be some sort of basis, what's known as 'good cause firing.' This bill removes all these restrictions. This norm, by itself, is enough to destroy all social and labor guarantees in Ukraine," alleged Sandul.

However, defenders of the reform say that they are simply codifying an already extant practice. The purpose of the new law, claims the Minister of Economic Development, Trade and Agriculture Tymofiy Mylovanov, is to regulate labor relations as they are, instead of leaving half the working population in the shadows.



The Minister of Economic Development, Trade and Agriculture Tymofiy Mylovanov speaks at the press conference on labor reform on January 14, 2020. Photo: Romeo Kokriatski

“We are trying to formalize all the shadow schemes, which are de facto present today in the labor market in Ukraine...” said the minister.

On paper, Ukraine’s current labor laws – like many labor laws in other European countries – make it difficult to fire employees, which critics of the current system say stifles innovation and dynamism in Ukraine’s businesses.

Despite the new labor reform carrying several exemptions for at-will dismissal, such as anti-discrimination and pregnancy, experience in the United States has shown that actually winning a lawsuit contesting unfair dismissal on discriminatory grounds is fairly difficult. In short, at-will employment raises the risk of unfair or uneven enforcement of anti-discrimination legislation, as the burden of proof rests on the worker.

“No one is going to be firing people on the basis of their protected categories. They’ll just fire you,” pointed out Sandul.

This could also have the effect of lowering the effectiveness of various government initiatives, such as anti-corruption measures meant to protect whistleblowers from retaliation.

Yet these criticisms, argues the government, fall short of their stated goal – in practice, says Mylovanov, only 50% of Ukrainian workers work legally, with the rest working in the so-called grey or black market, or abroad. This means that the effectiveness of existing labor legislation in protecting workers rights applies, at best, to only half of the working population.

As a result, the economic dynamism generated by introducing at-will employment and simplifying the bureaucratic process for firing employees could be worth the risk. A common argument often brought up in support of more flexible dismissals is the economic growth of the United States, as compared to Europe: the U.S., which uses at-will employment, averaged around 2.3% mean annual GDP growth over the past decade, while Europe, which typically requires "good cause" for dismissal, averaged around 1.8% mean annual GDP growth.

Mylovanov claims that competition is the best method to both protect workers rights, and encourage economic growth.

“Why did we stop regulating prices in supermarkets? Because we believe that competition between the supermarkets and the sellers is the best way to protect the rights of the buyer. That’s how a market economy works...That’s how the labor market should be as well. Why should we have to protect through defined, formalized, and outdated rules of the game in the labor market? You have to protect the worker through competition...” stated the minister.

Zero-hour Contracts Are Already Here

In total, seven new types of labor relations are codified by the bill:

1. Perpetual
2. Fixed-term
3. Short-term
4. Seasonal
5. Unfixed working hours
6. Student internships
7. Domestic worker

These have also drawn criticism – especially the unfixed working hours contract, also known as zero-hour contracts.

“Generally, labor contracts now are open-ended, that is, they don’t set a limit on the length of the work contract. That’s a guarantee of employment. But [this bill] introduces an understanding that is currently coming into conflict in the West, especially in the United Kingdom, of zero-hour contracts. This is a contract where an employer does not guarantee work, but instead creates work on-call,” explained Labor Initiatives Sandul.

Zero-hour contracts are commonly used to formalize what’s known as the ‘gig economy’ – rideshare drivers for companies like Uber, or delivery couriers for companies like Glovo in Ukraine. Since these ‘gig economy’ workers do not work on employer-set schedules and are only paid piecemeal, for each order or ride they fulfill.

As a result, supporters of zero-hour contracts argue that they represent a new model of labor relations that previously did not exist, as workers are not guaranteed work at all – despite working for the companies.

Meanwhile, critics of zero-hour contracts have pointed to their use and abuse in the United Kingdom – where, aside from their use in gig economy companies, they’ve been employed for non-tenured university lecturers, shop assistants, and more. Zero-hour contracts have been criticized as fostering oppressive and abusive work environments, as a worker must simply make themselves available at a given time period – precluding them from taking other work – but has no guarantee that they will actually be given work to do.

This has led to what Sandul calls the *“uberization of the economy.”* The government believes that codifying this new type of employment structure is necessary, but that it isn’t entirely supportive of the idea.

“Every specific contract we’ll monitor, and if needed – if there are negative implications of this contract, we will remove them through appropriate amendments, or we’ll adjust them as necessary...These zero-hour contracts are present [in Ukraine], unfortunately, and just making them illegal is not going to solve the problem. We think this an intermediate step towards resolving the issue. But the issue absolutely is there,” explained Mylovanov.

The Brain Drain

Another goal of the labor reform is to arrest the so-called "brain drain", a name given to a process where qualified specialists leave the country for better opportunities abroad. Ukraine has been particularly impacted by this phenomenon: according to government data. The Cabinet of Ministers

have said that 3.8 million Ukrainians had emigrated from the country in the last decade – among them professors, teachers, doctors, engineers, programmers, and more high-skilled professionals.



This

brain drain has impacted critical functions, such as nuclear plant maintenance. Gintare Zakolyapina, a chemical engineer working at Ukraine's Chernobyl nuclear plant, attended a protest against the proposed reforms as a representative of the Chernobyl trade union. She believes that the removal of social protections, guaranteed by current legislation, could exacerbate the staffing issues the plant already experiences.

"To remove all social guarantees, all the miscellaneous assistance for young specialists which are currently included in several collective agreements and legislations, then there will simply be a massive outflow of all qualified specialists," she said in a comment to Hromadske. "Unfortunately, we're faced with this situation in Ukraine where lots of people leave [abroad]... You know, we have this phrase – that the Chernobyl Nuclear Plant is a very sad experience for Ukraine. God willing, this situation won't repeat itself. But a nuclear power plant without staff, I think everyone knows where that would lead."

Other Controversies and a Rough Timeline

This reform, like many of the reforms passed by the Zelenskyy administration, are part of what's popularly called the "turboregime," an accelerated reform process aided by majority control of parliament by the president's party, Servant of the People.

As a result, the reform has been criticized for having been written quickly, without the usual involvement of stakeholders impacted by the bill, such as workers and labor unions.



“That’s how it worked for the last 17 years...all the governments of the past 17 years have sat down [with stakeholders] and amended the labor code. This is the only so-called government that has behaved itself like a scam artist,” said railway worker union rep Oleksandr Mushenok. *“If there is a need to change labor legislation, then you need to sit down at the table in a civilized fashion and work it out.”*

As for the content of the bill itself, protestors have emphasized the market-oriented nature of the reforms. While the government has touted this feature of their ideology, others see it as a radical ideology.

Another issue brought up is the possibility of this bill violating some of Ukraine’s international agreements. Ukraine is a signatory to many of International Labor Organization conventions, which critics say this reform is in opposition to. It also runs the risk of violating some of the points in the Ukraine-E.U. Association Agreement, which many see as a stepping stone to greater Ukrainian integration with the E.U.

“UN pacts are violated. The European Social Charter is violated. The E.U. Association Agreement is violated...I did a specialized analysis, it came out to 17 conventions...practically all of them are violated in one way or another,” **said Vasiliy Shilov, a member of the Ukrainian Federation of Trade Unions.**

If and when the bill makes it to an open vote, Servant of the People will not need to contend with opposition MPs or coalition partners to pass it – it’ll pass purely on their own initiative. On January 15, the bill was examined by the Parliamentary Committee on Social Policy and the Defense of Veteran’s Rights, who have decided to create a working group on the topic, after which the first vote in Parliament is scheduled to be held, though it’s unclear how long that will take.

But, if land reform is any indication, Ukrainians should expect labor reform to follow the same process – the bill passing, at least on the first reading, with full or nearly full support from the majority party.

/By Romeo Kokriatski