The Employment Law Review

Second Edition

Editor

Erika C Collins

Law Business Research

The Employment Law Review

SECOND EDITION

THE EMPLOYMENT LAW REVIEW

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Editor
Erika C Collins

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EDITOR'S PREFACE

Erika C Collins

Over the past year we have witnessed both the beginnings of a recovery from and the continuing effects of the financial crisis that has dogged the world economy and characterised employment relations over the past several years. All signs indicate that these trends are likely to continue for the foreseeable future. The 'Year in Review' and 'Outlook' sections of nearly every chapter in this edition detail efforts by countries to address the continuing effects of the economic downturn. For example, in an apparent effort to increase competitiveness and stimulate business, and, in particular, to battle unemployment, a number of governments have made or are considering efforts to decrease financial burdens on businesses, including the costs of labour. In New Zealand, for example, recent amendments to the Employment Relations Act, including with regard to trial periods, union access and the test for unjustified dismissal, were designed to provide employers with more flexibility in making hiring and firing decisions. Similarly, proposals to implement two new working shift regimes in Costa Rica are designed to provide employers with flexibility to compete in the global market. There is also a trend, however, of cash-strapped governments strengthening certain regulatory requirements and increasing enforcement of new and existing regulations in an effort to collect much-needed funds in the form of taxes or penalties for non-compliance. The new UK Bribery Act, which was passed in 2010 and comes into force in April 2011, and China's increased scrutiny of secondment arrangements for corporate tax purposes are both excellent examples of this phenomenon. Similarly, a number of countries, including the Czech Republic, France and Ukraine, have passed, or are considering, pension reform in an effort to alleviate government budget concerns. We expect that many of the recent changes to employment regulations throughout the world, and those that will be encountered in the coming years, are or will be driven by similar motives.

The Employment Law Review is meant to serve as a helpful guide during these somewhat unpredictable and alternatively difficult and exciting times. For example, an increase in merger and acquisition activity is expected as companies continue to rebound and experience increased liquidity. In anticipation of this, we have added to this edition

a section on the business transfer laws in each country as they relate to transfers of employees. This edition also boasts the addition of 12 new countries, bringing the number of covered jurisdictions to 48. As with the first edition, this book is not meant to provide a comprehensive treatise on the law of any of these countries but rather is intended to assist practitioners and human resources professionals in identifying the issues and determining what might land their client or company in hot water. This will be particularly important as companies continue to grow their global footprint, including through merger and acquisition activity, and find themselves in new jurisdictions with unfamiliar laws.

The second edition of *The Employment Law Review* has once again been the product of excellent collaboration, and I wish to thank our publisher and all of our contributors, as well as Michelle Gyves, an associate in the international employment law practice group at Paul Hastings, for their tireless efforts to bring this book to fruition.

Erika C Collins

Paul Hastings LLP
New York
March 2011

Chapter 44

UKRAINE

Svitlana Kheda[*]

I INTRODUCTION

Ukrainian labour law has inherited a significant number of concepts and approaches from the Soviet era. Despite numerous changes, the Labour Code of 10 December 1971, which is the key piece of legislation regulating employment matters, remains highly employee-focused and full of pitfalls. Specific statutes have been adopted since Ukraine became independent to deal with labour safety, remuneration, vacation, collective bargaining agreements, the employment of Ukrainians and the employment of foreigners, but the replacement of the Labour Code is necessary to enable Ukrainian labour law to adapt to the needs of a market economy.

In Ukraine, labour disputes are considered by (1) the labour disputes commissions ('the LDC') and (2) courts of general jurisdiction.

The LDCs are created in companies with 15 or more employees and elected at the general meeting of the labour collective. An LDC hears a case if an employee fails to settle a dispute with the employer either directly or through a trade union. The decision of an LDC can be appealed in a local court of general jurisdiction. Certain categories of labour disputes have to be directly considered by court (e.g., when there is no LDC in the company, in wrongful dismissal cases). A new trend in Ukraine is to settle labour disputes through mediation.

There are a number of government agencies responsible for supervising and controlling the labour law compliance in Ukraine, including the State Inspection on Labour, the State Department on Monitoring Labour Legislation Compliance, the State Committee on Labour Safety, the Ministry of Health Protection, etc. The State Employment Centre is responsible for issuing work permits to foreign employees, and the local bodies of the Ministry of Interior provide such employees with temporary residence certificates.

* Svitlana Kheda is a counsel at Sayenko Kharenko.

II YEAR IN REVIEW

This year a number of legislative incentives in the area of labour law have been introduced in Parliament, which resulted in amendments to certain provisions of the Labour Code and the subordinate legislation. For instance, the Labour Code was clarified with respect to the number of instalments and timing of salary payments per month.

The Law on Personal Data Protection came into force on 1 January 2011 (see Section X, *infra*).

The Cabinet of Ministers has introduced a minimum hourly salary to be applied together with the minimum monthly salary.

The Ministry of Labour and Social Policy published a number of letters, in particular confirming that employees cannot be fired on the sole ground of reaching the pension age; that pregnant women, women with children under three and single mothers with children under 14 can be dismissed only in the event company liquidation; and clarifying the terms of compensation for employees for work during weekends and state holidays.

A new Classification of Jobs and Positions has been adopted, providing the names of the positions and jobs to be used in employment documentation. The Classification reflects modern trends (i.e., the positions and jobs classified during the Soviet era have been replaced with their modern analogues).

III BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP

i Employment relationship

The employment relationship in Ukraine is established by an employment agreement between an employer and an employee. The employment agreement contains the terms of employment, including the name of the position, a description of the work to be performed by the employee, the obligation of the employee to observe the internal labour rules, the obligation of the employer to ensure adequate working conditions, and the salary to be paid for the performance of employment duties. The Labour Code provides that employment agreements shall be concluded, generally, in writing and establishes some specific cases when the employment agreement must be in writing (e.g., with employees under 18, with any employee insisting on this). Many Ukrainian companies (especially those with foreign participation) have been entering into formal written employment agreements with their employees more frequently.

In general, most agreements are concluded for an indefinite term. Even though Ukrainian labour law enables an employer to conclude fixed-term employment agreements with its permits, these agreements should be concluded only with those employees whose work by its nature is of a limited duration, that is, when it is possible to estimate the last day of their employment. It is also possible to enter into an employment agreement 'until the completion of agreed-upon work' when it is impossible to determine the period necessary to complete the limited scope of agreed-upon work. An employee can also state in his or her employment application that he or she is asking to be employed for a fixed term for family or personal reasons.

Ukrainian labour law also provides for a special form of an employment agreement, called an 'employment contract', that may be concluded either for a fixed term or for an indefinite period. The employment contract, unlike an ordinary employment agreement, contains the following features:

a it allows the employer to establish an employment relationship for a fixed period of time even where the nature and conditions of employment would not ordinarily warrant the conclusion of an employment agreement for a fixed term;

b it may contain reasons for the discharge of an employee in addition to the list of grounds provided in the Labour Code; and

c an employer and an employee may also agree in the employment contract on their additional rights, obligations and liabilities and conditions of remuneration, apart from those provided by law, provided that such additional terms do not diminish the rights guaranteed to the employee by law.

The use of employment contracts is limited to cases specifically provided for by the laws of Ukraine, including in certain branches of the economy, for certain types of companies or for certain positions (e.g., with company directors, teachers, scientific research employees or paralegals).

A written employment agreement or contract can be concluded before or on the date of issuing a hiring order by the employer and becomes effective on the date of the hiring order. It must be signed by the employee as the party to the employment agreement or contract.

The parties can amend the employment agreement or contract at any time. To change the essential terms of employment (e.g., compensation, working hours) the employer must issue an order notifying the employee of such changes at least two months in advance.

Irrespective of the form of an employment agreement, the employer must issue an internal hiring order to document commencement of the employment relationship stating the employee's position and salary. An employment agreement is deemed to be concluded even if a hiring order was not issued, but an employee *de facto* was admitted to work.

In addition, the employer must enter the relevant record in the employee's labour book. The labour book is a record of employment activity and must be kept by the employer for each employee working for more than five days.

ii Probationary periods

When concluding an employment agreement, the employer may set a probationary period for the employee, which cannot exceed one month for blue-collar workers or three months for other employees. In certain circumstances (e.g., for state officials), the probationary period can be up to six months, subject to the relevant trade union's consent.

Considering the complexity involved in dismissing employees under Ukrainian law, employers frequently use the probationary period as a legal and practical way to ascertain the suitability of a candidate for the position by making a candidate's employment subject to his or her successful completion of the probationary period. In this case, the

conditions and terms of the probationary period must be stated in the hiring order and the employer can dismiss the non-performing employee within this probationary period merely by stating that the results of his or her probation are not satisfactory.

The law does not require the employer to issue an advance dismissal notice to an employee on probation. The employee is also not required to provide the employer with any advance notice if he or she decides to resign.

iii Establishing a presence

Generally, there is no prohibition on foreign companies not registered in Ukraine hiring Ukrainian employees, provided that they do not have a permanent establishment ('PE') in Ukraine, as discussed *infra*. Foreign companies may also use the services of employment agencies to hire Ukrainians to avoid registration with the Ukrainian tax authorities, in which case these agencies will have to be the *de jure* employers of the Ukrainian employees working for non-residents.

If a salary and social benefits are paid by a non-resident employer to its Ukrainian employee and this employer has no PE in Ukraine, the amounts of salary and social benefits will only be subject to Ukrainian individual income tax, which will be paid personally by the Ukrainian employee on an annual basis.

For the purposes of taxation, the PE of a foreign entity may be created through either a fixed place of business of such foreign entity in Ukraine, or an agent, commissioner or other resident acting in a similar capacity. At the same time, a non-resident employer shall not be deemed to have a PE in Ukraine merely because it conducts business in Ukraine through a broker, general commission agent or any other agent with an independent status, provided that such person acts in the ordinary course of their business.

A foreign company may engage an independent contractor under a service agreement without registering with Ukrainian state tax authorities, unless such engagement creates a PE. If the foreign entity's activity through an independent contractor creates a PE in Ukraine, such foreign entity may be subject to full taxation in Ukraine.

Employees, including foreigners working for Ukrainian companies, are required to be paid a salary, sick leave allowance, annual holiday pay and some other statutory benefits depending on the employee's category. Statutory benefits must be declared by employers, which are also responsible for withholding individual income tax at source, unless such benefits are exempt (e.g., maternity leave compensation).

IV RESTRICTIVE COVENANTS

A contractual obligation of an employee not to work for a competitor either during or after the termination of his or her employment as part of a non-compete clause will not be enforceable in Ukraine. In practice this rarely happens as there are other mechanisms that prevent employees from working for competitors. However, employees are allowed by law to work for whomever they wish and the court will most likely honour their choice of employer by refusing to enforce the non-compete clause, if one exists.

One of the basic employee rights stipulated in the Labour Code is the right to freely choose one's profession, occupation and job. Free choice of the type of employment activity is also guaranteed by the Labour Code.

Ukrainian labour law is very protective of employees, meaning that even though the Labour Code allows an employer to conclude employment contracts with certain categories of employees where provisions that differ from those envisaged by the Labour Code may be included, these provisions must not worsen the employees' position as compared with the Labour Code, as such provisions will be considered null and void.

V WAGES

i Working time

The maximum number of working hours of full-time employees cannot exceed 40 hours per week, unless a non-fixed working day (or week) is established for certain categories of employees. The duration of the working day before a holiday or a weekend shall be reduced by one hour. In the case of a six-day working week, the duration of the working day before the weekend cannot exceed five hours.

Ukrainian law establishes, *inter alia*, the following working hour regimes:

a normal business hours, when overtime is paid at a double rate and employees are entitled to a leave allowance of 24 calendar days per year; and

b non-fixed working day, which may be established for employees whose working day time frame cannot be estimated in advance; such employees are entitled to a leave allowance of 24 calendar days per year and to additional leave of up to seven working days.

The Labour Code generally allows night work, provided that the working time at night is reduced by one hour. Employees working at night receive an increase to their base salaries, the exact amount of which must not be less than 20 per cent of their base salary for each hour of night work. It is prohibited to engage, among others, pregnant women and employees under 18 for night work.

ii Overtime

The general rule is that overtime is not allowed. The Labour Code provides an exhaustive list of exceptions when an employee may be required to work overtime. The maximum limit of overtime work is 120 hours per year. The overtime worked cannot exceed four hours over two consecutive days for the same employee. The employer must keep a record of overtime worked.

Employers are prohibited from requiring overtime work from, among others, pregnant women, employees under 18 and employees who are also full-time students receiving secondary or professional secondary education during term-time.

An employee's consent is required for overtime work if the employee has a child under 14. A trade union's permission must be obtained for each instance of overtime work. In the case of overtime work, employees are entitled to extra remuneration at a double rate for work performed in excess of the daily, weekly or monthly limit. The law prohibits employers from only compensating overtime work with additional leave or a leave of absence.

VI FOREIGN WORKERS

The majority of labour law provisions apply equally to Ukrainian and foreign nationals. Foreign employees therefore enjoy the same benefits, guarantees, and protections that are available to Ukrainian employees under Ukrainian labour laws and the employer's internal labour rules, policies and procedures. However, there are special procedures for hiring foreign nationals that must be followed to avoid administrative liability or even deportation of a foreign national.

In accordance with Ukrainian law, each foreigner intending to work in Ukraine for a Ukrainian company must obtain a work permit, and a work (IM-1) visa must be issued prior to entering Ukraine. Only foreigners permanently residing in Ukraine do not require work permits.

An application for a work permit and the supporting documents are submitted by the employer to the respective Employment Centre. These documents are considered by a specially created commission at the Employment Centre, which includes representatives of the Ministry of Internal Affairs, the state security service, the state frontier service and the state tax administration, etc.

There is no legal requirement for the employer to keep a register of foreign employees, nor is there a *de jure* restriction on the number of foreigners that can be employed by a Ukrainian company in a given period. However, the employer must be able to demonstrate in each case of filing documents for obtaining work permits for its foreign employees that employees with similar qualification cannot be found in Ukraine.

A decision on the issuance of a work permit is usually granted within 30 days.

A work permit may be issued for up to one year with a possibility of further extensions. Work permits for intra-corporate transferees and persons rendering services without being commercially present in Ukraine can be issued for up to three years and can be extended for two more years.

The termination of an employment contract with a foreigner results in termination of the work permit. Thus, every time a foreigner changes his or her place of employment in Ukraine, he or she must obtain a new work permit.

Violation of the work permit regulations may result in liability for a company, its executives and the foreign employee (up to his or her deportation from Ukraine).

The employer of a foreigner also must pay taxes and local benefits and notify the tax administration about the foreign employee's income and paid-up taxes on a quarterly basis.

VII GLOBAL POLICIES

Ukrainian law provides that a number of mandatory employment-related regulations can be adopted by Ukrainian companies, including a collective bargaining agreement, internal labour rules ('the Rules'), labour safety regulations, and some other documents, depending on the specifics of a particular company's business.

The most important disciplinary document is the Rules, negotiated by the employer and the company's trade union, and approved by the labour collective. Newly hired employees have to acknowledge their awareness of the contents of the Rules by

signing a respective statement. The Rules do not need to be filed with or approved by any government authorities.

All employment-related documentation, including the Rules, must be in Ukrainian, the company's form or ownership notwithstanding.

As a matter of practice, the Rules and other internal labour policies and procedures adopted in the company are incorporated into written employment agreements or contracts by reference. However, this is not required by law.

The Rules have to be easily accessible by all employees. They can be placed on the company intranet site, but an original hard copy should also be kept.

Ukrainian companies often issue other optional internal regulations (e.g., regarding discrimination, sexual harassment, corruption) in accordance with their global corporate policies.

VIII EMPLOYEE REPRESENTATION

Ukrainian law provides for trade unions as the only representative bodies for employees at the company level. If there is no trade union established in a company, some of its functions may be performed by the elected employees' representatives. In general, their functions are limited to the conclusion of collective bargaining agreements, the organisation of work, and the representation of the employees before the employer.

Ukrainian employees may freely and without any approval establish trade unions in any company. Foreigners may not establish trade unions, but they may become members of the existing union if it is specified in a respective internal regulation on unions. A trade union functions in a company through its elected body or representative. There are no specific requirements regarding the number of employees in a company or the company's ownership to establish a union.

Normally, employees establish one trade union in a company to represent employees in negotiations with the employer and protect their labour rights. In large companies, however, a few trade unions can be established. In such case, they should form a joint representative body with the purpose of signing a collective bargaining agreement.

The law provides for guarantees for a union functioning in a company; for instance, the amendment of the employment agreement or changing the payment terms of a union member employee requires the consent of the trade union.

A union can initiate dismissal of the company's director for violating labour legislation or avoiding participation in negotiations about the collective bargaining agreement, or not fulfilling his or her obligations under this agreement and violating other laws governing the collective bargaining agreements.

Trade unions also monitor employers' compliance with the labour legislation and its correct application of the established terms of payment of labour compensation, and are authorised by law to demand that the employer rectify such violations. One of the guarantees of union activity is its right to demand and obtain from the director and other company officers all documents, information and explanations related to the terms of labour compensation, performance of the collective bargaining agreements and

compliance with the labour legislation. Trade unions are entitled to file lawsuits with respect to the above issues.

The election procedures, the terms of service of the union's representatives, the frequency of the union meetings and many other issues are regulated by the union's charters.

IX DATA PROTECTION

i Requirements for registration

Under Ukrainian law, the main personal data include a person's nationality, education, family status, religion, health conditions, and address, date and place of birth. It is prohibited to collect personal data without obtaining a person's prior consent, except if required by law.

The Labour Code prohibits an employer from asking candidates for information on their nationality, political party membership, origins or place of residence, and requesting the submission of documents that are not required by law.

The Law on Personal Data Protection ('the Law'), which became effective on 1 January 2011, provides that personal data shall be treated as information with limited access. The processing of personal data is not permitted without a person's consent, unless otherwise required by law and only in the interests of national security, economic wellbeing and human rights protection.

The Law prohibits processing personal data related to race or ethnic origins, political, religious or ideological beliefs, political party or trade union membership, and data related to health and intimate life, except for, *inter alia*, when such processing is required by law in the area of employment relationships.

The Law requires all companies owning personal databases to register with the national data protection agency. A company can only process the personal data that are specifically authorised by a person. The employee's consent is required if the company wishes to transfer his or her personal data to third parties.

A company owning a personal database is responsible for ensuring the protection of the data contained therein from any illegal processing and access, including by designating an employee to perform these functions.

ii Cross-border data transfers

Ukrainian law does not require registration for the cross-border transfer of personal data. There is no special legal regulation of the cross-border transfer of personal data. To avoid any possible claims, it is recommended to follow the rules applicable to data transfers within Ukraine as discussed *supra*. In particular, if the employer wishes to transfer its employees' personal data abroad, it should obtain these employees' prior written permission for such transfer. The permission should contain information on the data addressee, the scope of the transferred data and the purpose of its processing. It is advisable for the employer to enter into an agreement with a foreign data recipient requiring the transferred data to be treated as confidential information.

iii Sensitive data

Information related to race, ethnic origins, political, religious and ideological beliefs, political party and trade union membership, as well as medical records and other data related to health and intimate life of an individual, is considered as sensitive data that, in general, cannot be requested and processed, except in certain cases specifically permitted by law, including when such processing is required by law in the area of employment relationships. Employees' sensitive data can be transferred to a third party, including a party located abroad, only after the employer obtains the prior written consent of the concerned employee for such transfer.

iv Background checks

Under Ukrainian law, an employer may request only a limited amount of information and documents from a candidate or employee. In all instances such requests should be justified by law. For instance, if a certain job has specific health or age requirements, the employer is authorised to request respective confirmations from the candidate.

The law clearly states which documents can be requested from a candidate or employee for each job (e.g., for teaching positions, criminal records can be verified) and the employer is forbidden from asking for additional documents or information (e.g., credit history, bank account statements).

X DISCONTINUING EMPLOYMENT

i Dismissal

Termination of an employment agreement at the employer's initiative is difficult and the employee cannot be dismissed without cause. The employer may dismiss an employee in the following limited cases provided in the Labour Code:

a changes in the company's activities, including its liquidation or reorganisation, bankruptcy, changes in its business, or reduction of its staff; in this case, the employer must notify the relevant government authorities of the pending dismissal of its employees and provide each affected employee with a prior dismissal notice, which notice cannot be replaced with a payment, as discussed in sub-section (i), *infra*. The consent of the company's union is required for the dismissal of each union member employee subject to dismissal on this ground (except in the event of a company's liquidation);

b non-compliance by an employee with his or her position due to inadequate qualifications or a health condition interfering with his or her ability to perform employment duties;

c systematic failure by an employee to fulfil his or her employment duties if disciplinary actions were previously taken against him or her;

d failureby the employee to appear at work for more than three consecutive hours in one working day without a good reason for such absence;

e failure to appear at work for more than four consecutive months due to a temporary incapacity to work unless a longer term is permitted by law for certain diseases and unless such incapacity was caused by work-related illness or severe injury;

f resumption of work of another employee who was previously occupying this position;

g if an employee came to his or her workplace drunk or under the influence of narcotics or toxins; or

h if an employee was found guilty of larceny of his or her employer's property.

The trade union's consent is required for dismissal of a trade union member on the grounds of (a) to (e) and (g) above.

Some employees can be fired on the following additional grounds stipulated in the Labour Code:

a gross violation of employment obligations by the director of a company or its branch, or his or her deputy, chief accountant, his or her deputy and some state officials;

b purposeful actions of a company director that resulted in untimely salary payments or salary payments that fell below the statutory minimum salary;

c purposeful actions of an employee managing funds or commodities if such actions resulted in the loss of trust in such employee; and

d immoral misconduct of the employee performing pedagogical functions that prevents such employee from further holding this position.

The trade union's consent is required for dismissal of a union member employee on the grounds of (c) and (d) above.

It is prohibited to dismiss:

a employees during their sick leave or vacation;

b pregnant women, women having children under the age of three, single mothers having children under 14 or a disabled child, except in the case of (1) company liquidation or (2) expiration of a fixed-term employment agreement or contract for the relevant employee;

c employees on the sole basis of reaching the retirement age; or

d union member employees without obtaining the prior consent of the union (in most cases).

On the dismissal date the employer provides the employee with his or her labour book and the dismissal order, and settles all payments due to the employee.

When the employee is dismissed due to redundancy or other changes in the company's activities, an employee's non-compliance with his or her position, and resumption of work of another employee, he or she is entitled to one average monthly salary as a severance payment.

Employees subject to dismissal on any grounds provided by Ukrainian law are entitled to receive compensation for unused vacation. The employer shall also pay to an employee any additional compensation or benefits that may be specified in a written employment agreement or contract with this employee and the collective bargaining agreement.

The law does not prohibit the employer and the employee from concluding a settlement agreement. To be enforceable, however, the provisions of this agreement must not worsen the employee's position as compared to Ukrainian labour laws.

ii Redundancies

Under the Labour Code, the employer may unilaterally initiate the dismissal of its employees due to redundancy. In such a case, the employer must notify all of its employees on their pending dismissal not later than two months prior to their dismissal and this notice cannot be replaced with a payment.

Under the Labour Code, employees with higher productivity levels or qualifications are given the priority to stay when dismissals are carried out due to redundancy or other changes in the company (except in the event of a company liquidation).

Between employees with equal qualifications and productivity levels, priority is given based on various criteria, including a preference for an employee who is the only working person in a family, who has long-term experience working at this company, who was made disabled during work at the company or developed a work-related health condition, etc.

The Labour Code also entitles employees dismissed due to redundancy or other changes in the company (except in the event of company liquidation) to be rehired by the employer within one year after their dismissal if the employer has vacancies for employees with similar qualifications. During such rehiring, priority is given to the above-mentioned categories of persons prioritised for retention during redundancy.

Redundancy can be performed only after the prior consent of the trade union (for member employees). The union shall consider the employer's reasonable written redundancy petition within 15 days, in the presence of each employee to be dismissed. The union shall notify the employer in writing of the adopted decision within three days. If this deadline is not met, it is considered that the union has agreed with the dismissal of all proposed employees.

Employees subject to redundancy have to be considered for employment in other available positions.

The State Employment Centre must be provided with at least two months' prior notice of the redundancy, stating the grounds for the pending dismissal of the company's employees and the positions, qualifications and salary of each employee. The State Employment Centre must also be given a list of the dismissed employees within 10 days after their actual dismissal.

The categories of employees protected from dismissal, severance and other dismissal payments, and the possibility of the parties to enter into a settlement agreement are discussed in sub-section (i) *supra* and apply equally to redundancies.

XI TRANSFER OF BUSINESS

There is no special business transfer law in Ukraine. The general employee guarantees and protections stipulated in the Labour Code apply during business transfers (e.g., transfer of the employee's rights to the business transferee, extension of the collective bargaining agreement to the new business owners, the transfer of business does not in itself constitute a ground for employee dismissal).

The Labour Code expressly provides that in the event of a change of a company's ownership or a company's reorganisation, the employment agreements with its employees shall remain in force. Employees of the seller are entitled to be automatically transferred

to the buyer, as a change of the target's ownership does not imply that the target ceases to be their employer under Ukrainian law.

XII OUTLOOK

As of 1 January 2011, employers, as personal data processors, have to implement the provisions of the Law on Personal Data Protection.

In addition, on 1 January 2011 a new Tax Code became effective, which will have a great impact on both employers and employees.

It is likely that 2011 will be the year of adoption of the long-awaited new Labour Code.

The government is currently working on pension reform, one of the most contentious issues of which is a possible increase of the pension age.

SVITLANA KHEDA

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Svitlana Kheda is a counsel in charge of the firm's labour and employment law practice. She has 13 years' experience of advising clients on all labour and employment law issues, including on the employment aspects of M&A transactions. Ms Kheda specialises in bringing global employment policies and procedures of transnational companies into compliance with Ukrainian law, including with Ukrainian anti-corruption legislation. Svitlana Kheda is a certified mediator experienced in employment mediation.

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