



International
Labour
Organization

Canada 

Technical note

to draft labour legislation regarding its compliance with the provisions
of ILO conventions and recommendations

Draft Law on Amendments to Certain Legislative Acts of Ukraine on Wages
[Posted](#) by the Ministry of Economy of Ukraine for discussion on 22.04.2021

Background and disclaimer

The comments therein have been prepared with a view to supporting the process of social dialogue on labour law reform in Ukraine. They represent technical expert opinions only and are provided without prejudice to any official comments that may be made by the Office on the final draft or by the ILO bodies responsible for supervising compliance of Ukrainian labour legislation with international labour standards. The present Technical Note does not constitute an endorsement by the International Labour Office of the opinions expressed therein.

ILO technical support in the drafting process of labour legislation seeks to increase the involvement of its primary beneficiaries – employers and workers – throughout the process of labour law reform. This reflects the core ILO principles of social dialogue and tripartism. It also expresses the letter and spirit of the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by Ukraine. Paragraph 5(c) of the Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152) also emphasizes the importance of consultations in relation to ‘the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations’.

In addition, some of the comments below are made in light of non-ratified ILO standards, as well as Recommendations. These particular comments are provided on the understanding that, in the present context, such standards are referred to not as binding instruments, but as a useful point of reference. ILO standards are adopted by a qualified majority of delegates attending the International Labour Conference; hence their content represents internationally accepted good practice, recommended by the ILO.

The current technical support is being provided in the framework of the technical cooperation project “Rights at Work: Improving Ukraine’s Compliance with Key International Labour Standards”¹.

№	The provisions of current national legislation	The provisions of draft Law	The provisions of ILO conventions and recommendations	Discrepancies and gaps identified in draft Law
<u>Labour Code of Ukraine, 1971 (LC)</u>				
1.	<p>Article 100. Remuneration for hard work, work with harmful and hazardous labour conditions, work with special natural geographical and geological conditions, and conditions of increased health risks</p> <p>For hard work, work in harmful and hazardous labour conditions, work with special natural geographical and geological conditions, and conditions of increased health risks, increased wages shall be set. The list of these works is determined by the Cabinet of Ministers of Ukraine.</p>	<p>Article 100. Remuneration for certain types of work</p> <p>Employees engaged in work in harmful, especially harmful and hazardous labour conditions shall be remunerated at an increased rate, which shall be determined in compliance with the rules and guarantees stipulated by law, as well as with provisions of the general, sectoral (intersectoral), territorial collective agreements, the collective agreement in local level, upon the results of workplace labour conditions compliance certification.</p>	<p>There are no provisions for ratified conventions on this issue.</p>	<p>1. Proposed amendments to the Article 100 of LC do not contradict the provisions of ILO instruments.</p> <p>2. A unified list of works, specified in the current version of the Article 100 of LC, has not been determined by the Cabinet of Ministers of Ukraine.</p> <p>As of the present moment, the Cabinet of Ministers of Ukraine, by Resolution No. 576 of 12.07.2005, approved only the List of works with difficult, harmful and especially harmful working conditions in construction, where higher wages are established.</p>

¹ The views and opinions, expressed in this technical note, do not necessarily reflect the official policy or position of Canadian Government.

		<p>Employees performing work with a high level of neuro-emotional and intellectual load, in special natural geographical and geological conditions, conditions of increased health risks may be remunerated at an increased rate in compliance with the law, provisions of the general, sectoral (intersectoral), territorial and local collective agreements.</p> <p>In the case of absence of a local collective agreement, being outside the scope of the general, sectoral (intersectoral), territorial collective agreements in accordance with the Law on Collective Agreements, increased remuneration for employees engaged in the work specified in part one of this Article shall be held in the framework of the employer's organizational and administrative document.</p>		<p>The special features of exercising the rights of employees to benefits and compensations for difficult and harmful working conditions are disclosed in the Article 7 of the Law on Occupational Safety and Health. In accordance with Part 3 of this Article, the employer may at its own expense additionally establish under the collective agreement (employment contract) benefits and compensations to the employee, not provided by law.</p> <p>The list and amount of additional payments and allowances (including for work in difficult and harmful and especially difficult and especially harmful working conditions), for consolidation in collective agreements, is provided in Appendix 3 of the of the National collective agreement for 2019 – 2021.</p> <p>In addition, in accordance with Paragraph 2.16. of the National Agreement, the</p>
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Law on Wages, 1995 (LW)

<p>2.</p>	<p>Article 3¹. Guarantees of the minimum wage</p> <p>The amount of an employee's wages for fully performed monthly (hourly) scope of work shall not be lower than the amount of the minimum wage.</p> <p>When calculating the employee's wage to set its minimum amount, surcharges for work in adverse working conditions and with increased health risk, for night and overtime work, work that implies travel, bonuses for holidays and anniversaries shall not be taken into account.</p> <p style="text-align: center;">...</p>	<p>Article 3¹. Guarantees of the minimum wage</p> <p>The amount of an employee's wages for fully performed monthly (hourly) scope of work shall not be lower than the amount of the minimum wage.</p> <p>When calculating the employee's wage to set its minimum amount, the following shall not be taken into account:</p> <p>the amounts by which wages are increased in accordance with the Article 100 of the Labour Code – regardless of the method of establishing such an increase (surcharge, allowance, wage increase, etc.);</p> <p>surcharges for combining of professions (positions), performance of duties of a temporarily absent employee,</p> <p>amounts of increased wages for work at night, work that implies travel;</p> <p>remuneration for overtime work;</p> <p>remuneration for work on weekends, holidays, and non-business days;</p>	<p>There are no provisions for ratified conventions on this issue.</p>	<p>1. Proposed amendments to the Article 3¹ of LW do not contradict the provisions of ILO instruments.</p> <p>2. In the proposed version of the Article 3¹ of LW, the list of components that are not taken into account when calculating the size of the employee's wages to ensure its minimum amount, has been expanded.</p> <p>3. In the proposed version of the Article, the wording “in accordance with the Article 100 of the Labour Code” is applied. Attention should be paid to the need to apply the full title of the given legal act, i.e., “in accordance with the Article 100 of the Labour Code of Ukraine”.</p>
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3.	<p>Article 9. Conditions for determining the amount of the minimum wage</p> <p>The amount of minimum wage is determined taking into account needs of employees and their families, cost value sufficient to ensure normal functioning of the able-bodied person, maintaining his/her health, the food set, the minimum set of non-food items, and the minimum set of services required to meet basic social and cultural needs of the individual, as well as the general rate of average wages, labour productivity, and employment.</p> <p>The minimum wage shall be set at a level not lower than the subsistence level for able-bodied persons.</p>	<p>Article 9. Conditions for determining the amount of the minimum wage</p> <p>The amount of minimum wage is determined taking into account, in particular:</p> <p>needs of employees and their families; average monthly wage; subsistence level for able-bodied persons; forecast consumer price index for the period when the minimum wage will apply; rate of employment, labour productivity, balance and validity of the State Budget; rates of taxes, mandatory fees and contributions.</p> <p>The minimum wage shall be set at a level not lower than the subsistence level for able-bodied persons calculated in accordance with the Article 5 of the Law of Ukraine on</p>	<p>Ukraine has ratified: Minimum Wage Fixing Convention, 1970 (No. 131).</p> <p>The Article 3 of C131 among the elements that must be taken into consideration when determining the level of the minimum wages, defines: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.</p> <p>The Paragraph 3 of Minimum Wage Fixing Recommendation, 1970 (No. 135) states that in determining the level of minimum wages, account should be taken of the following criteria, amongst</p>	<p>In accordance with the Article 5 of the Law on the Subsistence Minimum, to monitor the dynamics of living standards in Ukraine on the basis of statistical data on the level of consumer prices, the central executive body that ensures the formation of state policy in the areas of labour relations and social protection of the population, calculates monthly the actual subsistence level per person, as well as separately for those who belong to the main social and demographic groups of the population.</p> <p>According to the latest official data, the actual subsistence level for able-bodied persons in April 2021 was UAH 4 421 (taking into account the amount of obligatory payments – UAH</p>

	<p>the Subsistence Minimum, for the period from January to June of the year preceding the year for which the minimum wage is set.</p>	<p>others: (a) the needs of workers and their families; (b) the general level of wages in the country; (c) the cost of living and changes therein; (d) social security benefits; (e) the relative living standards of other social groups; (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.</p> <p>In Observation (CEACR), adopted in 2020, the Committee notes that in their 2019 observations, the ITUC and the KVPU indicate that the minimum wage does not adequately take into account the needs of workers and their families and the cost of living. According to the ITUC, the minimum wage established for 2019 is 12 per cent lower than the subsistence minimum calculated by the Ministry of Social Policy, a benchmark which is not even adequate given that it does not factor in a number of household expenses. The KVPU also states that the Government has not considered the trade unions' suggestion to introduce a system</p>	<p>5 492). The minimum wage in April 2021 is UAH 6 000.</p> <p>It should be noted that the wording proposed in the Article 9 (2) of LW (<i>“minimum wage shall be set at a level not lower than the subsistence level for able-bodied persons calculated in accordance with the Article 5 of the Law of Ukraine on the Subsistence Minimum, for the period from January to June of the year preceding the year for which the minimum wage is set”</i>) does not reduce the possibility that for the period of validity of the minimum wage, it may be lower than the actual size of the subsistence minimum for able-bodied persons.</p>
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4.	<p>Article 10. The procedure for setting and revising the minimum wage</p> <p>The amount of the minimum wage is established by the Parliament of Ukraine on the proposal of the</p>	<p>Article 10. The procedure for setting and revising the minimum wage</p> <p>The amount of the minimum wage is established by the Parliament of Ukraine on the proposal of the</p>	<p>Ukraine has ratified: Minimum Wage Fixing Convention, 1970 (No. 131). <i>There are no comments from CEACR on this issue.</i></p>	<p>Proposed amendments to the Article 10 of LW do not contradict the provisions of ILO instruments.</p>

<p>Cabinet of Ministers of Ukraine at least once a year in the Law on the State Budget of Ukraine, taking into account the proposals made through negotiations by the joint representative body of trade union associations and the joint representative body of associations of employers' organizations at the national level.</p> <p>The amount of the minimum wage shall not be reduced in the event of a reduction in the subsistence level for able-bodied persons.</p> <p>...</p>	<p>Cabinet of Ministers of Ukraine at least once a year in the Law on the State Budget of Ukraine, taking into account the proposals made through negotiations by the joint representative body of trade union associations and the joint representative body of associations of employers' organizations at the national level.</p> <p>The minimum wage shall not be reduced.</p> <p>...</p>	<p>Under the Article 2 (1) of C131, minimum wages shall have the force of law and shall not be subject to abatement.</p>	
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