

**MINISTRY OF EDUCATION AND
SCIENCE OF UKRAINE**

**UKRAINE IMPROVING HIGHER EDUCATION
FOR RESULTS PROJECT**

(P171050)

Labor Management Procedure
(Draft)

January 2021

List of Acronyms

| | | |
|------|---|---|
| EHS | | Environment Health and Safety Guidelines |
| ESMF | | Environmental and Social Management Framework |
| ESMP | - | Environmental and Social Management Plan |
| ESS | - | Environmental and Social Standard |
| GIIP | | Good International and Industry Practices |
| GRM | - | Grievance Redress Mechanism |
| HEI | - | Higher Education Institution |
| LMP | - | Labor Management Procedure |
| MoES | - | Ministry of Education and Science of Ukraine |
| OHS | - | Occupational Health and Safety |
| PBCs | - | Performance-based conditions |
| PIU | - | Project Implementation Unit |

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1. INTRODUCTION TO THE PROJECT

The proposed Ukraine Improving Higher Education for Results Project Development Objective (PDO) is to improve efficiency, conditions for quality, and transparency in higher education system of Ukraine.

The achievement of the Project's PDO is expected via implementation of four components, as described in more detail below:

Component 1: Sector-Wide Improvements to Governance, Financing, Quality and Transparency will support the Government in implementation and monitoring of sector-wide reforms affecting higher education governance and financing, quality, and transparency, as well as support strategic communications related to both the project and the larger higher education reform. The Sub-components: 1.1 will support strategic sector-wide investments to strengthen system management, planning and monitoring, and the *Sub-component 1.2: Strategic results to strengthen performance-based incentives in higher education* will finance critical performance-based conditions (PBCs) related to the introduction and implementation of performance-based incentives at the system-level and the institutional level in the higher education sub-sector. The project sub-component will co-finance results under the following specified PBCs:

- PBC 1: Performance-based funding formula for Higher Education Institutions (HEIs) implementation that incorporates a stability funding component and a performance-based component.
- PBC 2: Financial autonomy for HEIs. The proposed Project will support the Government's vision for financial autonomy for HEIs by financing actions that enable such autonomy. Two PBCs would be supported under this PBC:
 - PBC 2.1: Financial autonomy for HEIs: legislation. This will include necessary revisions to the Law on Higher Education and/or related laws to address issues of budgetary institutions and other aspects of financial autonomy for HEIs.
 - PBC 2.2: Financial autonomy: adopting bylaws. This will include development and adoption of bylaws for financial autonomy in HEIs in accordance with existing legislation.
- PBC 3: Performance-based rector contracts with KPIs signed (scalable) (KPIs are negotiated jointly between the MoES and the rector of the HEI).

Component 2: Alliances and Partnerships for Improved Efficiency and Quality will support the Government to improve fiscal efficiency in the higher education sector and to support merged HEIs in improving the conditions for quality teaching and learning as a part of institutional merger processes. This component also includes two sub-components:

Sub-component 2.1: Strategic investments to ensure successful university mergers. Under this sub-component, the MoES will select HEIs promoting successful implementation of governance and financial autonomy reforms, as well as quality of higher education¹. Those HEIs would receive “merger support packages”- a finance packages - to invest in renovation (minor civil works) for laboratories for teaching, research, and/or learning, equipment for laboratories, learning support facilities, and other learning spaces, modern digital infrastructure and IT to support distance learning, and other minor refurbishment/rehabilitation. New construction will not be supported. The *Sub-component 2.2 - Strategic results to support consolidation in higher education* will finance a critical disbursement-linked PBCs related to institutional mergers and consolidation of the network of higher education institutions in Ukraine. This component will follow a result-based approach and will co-finance a result under the following PBCs:

¹ HEIs benefiting from the ongoing Higher Education Project financed by the European Investment Bank (EIB) and the Nordic Environment Finance Corporation (NEFCO) would not be subject to mergers.

- PBC 4: Number of mergers of public HEIs under MoES (scalable). This PBC is scalable, rewarding the number of mergers of public HEIs under MoES.

Component 3 – Capacity Building and Education Environment Enhancement has the objective to build capacity and improve the educational environments, academic managers and research capacity in HEIs, including HEIs to maintain learning continuity and operational resilience via remote and distance modalities. In the short-term, this will support HEIs to adapt to the new operating reality imposed by COVID-19. This component would also support the establishment of an Operational Sustainability Team within the MOES, staffed by a small number of specialized consultants to facilitate the process of introducing financial, staffing, human resources, and other types of autonomy at the institutional level.

Component 4: Project Management, Monitoring & Evaluation has the objective to support the effective management and implementation of the proposed project. Additionally, the component would finance the day-to-day management and monitoring and evaluation of the proposed project through the establishment and maintenance of a Project Implementation Unit (PIU) at the Ministry of Education and Science (MoES).

2. OVERVIEW OF LABOR USE ON THE PROJECT

Number of Project Workers: At this stage the type of labor requirements and exact number of project workers cannot be determined. The project activities and supporting agencies will be known after the effectiveness of the project and the draft LMP can be updated accordingly. As per the project scope and proposed activities approximately 150-200 (to be specified) construction workers may be employed for the performance of the minor rehabilitation and construction works at the selected educational institutions. An estimated 20-40 persons will be hired either as individual consultants or staff of consulting companies to provide technical assistance services under the project.

It is expected that Project will engage the following categories of project workers as defined by ESS2:

Direct workers: Direct workers would include the individual consultants working for the Project Implementation Unit (PIU) established under the MoES. The number of direct workers estimated at 5-7 key staff members who will be responsible for the project management, monitoring, evaluating and reporting, compliance with fiduciary, environment and social requirements.

Contracted Workers: Contracted workers would be hired for minor works as well as for the technical assistance activities under the project. The number of contracted workers is currently estimated around 150, but it may vary depending on how many workers a Contractor may hire by selected HEIs.

Migrant workers: *International migrants are not expected to be hired under the project.* However, some internal migrants, i.e. workers from other regions of Ukraine may be employed as workers outside their area of residence. The main risks associated with these workers is that they may be employed on part-time /temporary basis without defined benefits/written contracts etc. It might also be possible that unskilled workers have to work overtime without appropriate pay.

Timing of Labor Requirements: The direct workers at PIU will be required full time and round the year of the project duration. The timing and sequencing of labor on the project currently cannot be defined. This section can be filled once the sequencing of the implementation plan and procurement plans are finalized.

3. ASSESSMENT OF KEY POTENTIAL LABOR RISKS

Project activities

The activities that are envisaged under the Project Sub-component 2.1 include civil works that are connected with rehabilitation and renovation of the educational facilities of selected higher education institutions. The minor civil works may include the renovation of laboratories for teaching, research, and/or learning, equipment for laboratories, learning support facilities, and other learning spaces, modern digital infrastructure and IT to support distance learning, and other minor refurbishment/rehabilitation, e.g. to enhance fire safety. New construction will not be supported. The rest of the activities are mainly technical assistance and consulting activities to improve the quality and financing of higher education in Ukraine.

Key Labor Risks and Hazards

The key labor risks related to the occupational and health safety relate to the above-mentioned minor works. The specific civil works are not known currently as the higher education institutions will have to define those in their applications during project implementation. However, it can be estimated that some of those generic risks would include, but not be limited to the following:

- Working at height.
- Moving objects, lifting of heavy structures/equipment
- Slips, trips, and falls.
- Noise.
- Exposure to chemicals (paints, solvents, lubricants, and fuels, pulverized silica, fuels, etc.)
- Material and manual handling.
- Collapsing trenches.
- Demolition hazards and debris, e.g. asbestos containing materials used for insulation (roofs, walls, etc.), lead containing paints on wall, windows, etc.
- Electrical Works.
- Welding hazards
- Dust, airborne fibers and materials, etc.
- Traffic accidents.
- Biological hazards (demolition sewer system, etc.).
- Risks related to the spread of COVID-19 among workers.

While the Ukraine labor management and OHS legislation is extensive (as presented below), its actual implementation and enforcement have proven to be lacking, particularly in terms of enforcement of safety and OHS regulations. This may particularly concern the hygiene, accommodation and employment rights of the seasonal workers who may not be residents of the locality where the minor works occur. Based on the experience with construction projects in Ukraine, it is assumed that long overtime hours may be a potential labor risk, and lack of adequate rest period during the week. Other labor risks are not considered to be significant. Ukraine also has few regulations governing migrant workers, explained below. As per the initial

screening and country reports, the project is evaluated low on gender-based violence risk. However, the PIU will monitor the development and adjust the risk profile in case of changes.

4. BRIEF OVERVIEW OF LABOR LEGISLATION: TERMS AND CONDITIONS

This section sets out the *key aspects* of national labor legislation with regards to term and conditions of work, and how national legislation applies to different categories of workers identified in Section 1. The overview focuses on legislation which relates to the items set out in ESS2, paragraph 11 (i.e. wages, deductions and benefits).

Relations between employer and employee are regulated by the Labor Code of Ukraine (hereinafter - the LC)², which is a principal legislative act governing employment relations in Ukraine, and was adopted in 1971. A number of LC's provisions are elaborated in the subordinate legislative acts.

The Law of Ukraine “On remuneration”³ defines the economic, legal and organizational principles of remuneration of employees who are employed on the basis of an employment contract with a company or an individual citizen.

The Law of Ukraine “On leaves”⁴ sets state guarantees of the right to leave, vacations, determines conditions, duration and procedure of their granting to the employees for satisfaction of own needs, interests and comprehensive development of a personality.

The Law of Ukraine “On the collective agreements”⁵ determines the legal basis of development, conclusion and accomplishment of collective agreements and agreements with the purpose of assistance in regulation of employment relationships, social and economic interests of workers and employers.

The Law of Ukraine “On employment”⁶ determines the legal, economic and organizational principles of realization of state policy in the sphere of employment of the population, guarantee of the state protection of the rights of citizens to work and realization of their rights to social protection against unemployment.

On March 17, 2020, the Parliament of Ukraine adopted the Law of Ukraine no. 530-IX⁷ “On Amending Certain Legislative Acts of Ukraine Aimed at Prevention of the Outbreak and Spread of the Coronavirus Disease (COVID-19)”, which amends inter alia the laws governing employment relations. The adopted changes to the Labor Code to address issues related to remote work, flexible schedule and salaries/compensations during the halted operations.

4.1 Types of Employment Contracts

According to the Constitution of Ukraine (article 43) everyone has the right for labor and for opportunity to earn for living by job that were chosen freely by person.

Non-residents have the same rights to work in Ukraine as any Ukrainian has. However, non-residents have to provide certain documentation before starting to work in Ukraine. The first one is the work permit

According to the article 23 of Labor Code of Ukraine, there are following types of Employment contracts:

² The [Labor Code of Ukraine \(LC\)](#) dated December 10, 1971 No 322-VIII

³ The Law of Ukraine “[On remuneration](#)” dated March 24, 1995 No 108/95-BP

⁴ The Law of Ukraine “[On leave](#)” dated November 15, 1996 No 504/96-BP

⁵ The Law of Ukraine “[On the collective agreements](#)” dated July 1, 1993 No 3356-XII

⁶ The Law of Ukraine “[On employment](#)” dated July 05, 2012 No 5067-VI

⁷ <https://zakon.rada.gov.ua/laws/show/530-20#Text>

The main types of employment agreements are: a) open-ended employment agreement (for indefinite term); b) fixed-term employment agreement; c) employment agreement for a temporary work (temporary or seasonal work):

Open-ended Employment agreement. This type of contract is the most common in Ukraine. The type of contract is regulated by the LC and labor laws of Ukraine mentioned above, internal rules of an Employer (Company) and collective agreement.

- Fixed-term employment agreement. The only difference between this type of contract and the first one is that the Parties limit their collaboration on a specific period of time, based on the type of activity performed: a) working conditions (for example, to replace an employee on maternity leave); b) the nature of the work (for example, hiring an employee to perform temporary repair works); c) the interests of the worker (for example, in connection with the family circumstances). Fixed-term employment agreements, especially those, which are to be renegotiated once or several times shall be considered as employment agreements, concluded on indefinite period of time (Art. 391 of the LC). There are two special types of a fixed-term employment agreements such as employment agreements with (1) temporary and (2) seasonal workers. Terms and conditions of such work are determined by special legislative acts (Art. 7 of the LC).⁸
- Employment agreement for a temporary work (temporary or Seasonal work). Seasonal work is a temporary employment that is provided for a certain period (season), which does not exceed 6 months.⁹ Temporary work is a type of employment, whereby workers are engaged only for a specific period of time. Employment agreement on temporary work may be concluded for a period not exceeding 2 months, and in case of replacement of an absent employee - for a period that does not exceed 4 months. Employment agreement on temporary and seasonal works terminates upon its expiration. This special form of contract is actually a service agreement. By using this sort of agreement the Parties agree and acknowledge that all conditions of their collaboration are conveyed in the agreement.

⁸ [Decrees of the Presidium of the Supreme Soviet of the USSR "On working conditions of workers and employees engaged in seasonal work" dated 24.09.1974 No 310-09](#) and ["On working conditions of temporary workers and employees " dated 24.09.1974 No 311-09](#)

⁹ The List of seasonal works and industries include:

- (1) Forest industry and forestry
 - extraction of resin and tree sulfur;
 - harvesting of stump resin;
 - forest protection;
 - seed harvesting;
 - harvesting;
 - forest management works.
- (2) Peat industry
 - swamp preparatory works;
 - extraction, drying and harvesting of peat;
 - repair and maintenance of technological equipment.
- (3) Agriculture
 - gardening, viticulture, beet growing, hop growing, potato growing and harvesting, tobacco, fodder, melons, medicinal plants;
 - work on hatchery and poultry and inter-farm incubator stations.
- (4) Manufacturing industries
 - work at the enterprises of processing of fruit and vegetable production;
 - work at the enterprises of sugar industry;
 - primary winemaking.
- (5) Sanatoriums and recreation facilities
 - works related to spa services.
- (6) Transport and road complex
 - aviation works in the sphere of agriculture and forestry.

- **Probationary period.** Parties to employment agreement may agree on a probation period to verify the employee's competence (Art. 26 of the LC). According to the article 27 of LC of Ukraine, the probationary period cannot be longer than 3 consecutive months for regular employees. In some cases it can be up to 6 consecutive months, but it must be agreed with the Primary Trade Union Organization. Workers (blue-collar occupation) are the subject of a maximum 1 month probation period.

The LC requires that an employment agreement is concluded in writing (Art. 24 of the LC), however it does not prohibit conclusion of the employment agreement in verbal form. An employer has no right to require an employee to perform work not stipulated in the employment agreement (Art.31 of the LC). The law provides that the terms of employment agreements, which may worsen the position of workers in comparison with the labor legislation of Ukraine are void (Art. 9 of the LC). The employment agreement may contain additional benefits for workers in addition to those basic benefits provided in the in the legislation) (Art. 9¹ of the LC).

According to Art. 24 of the LC, written form of employment agreement is mandatory in following cases: a) when the worker requests concluding of an employment agreement in writing; b) when the employment agreement is concluded with a minor; c) in instances of remote work; d) in instances of organized recruitment; e) in instances of concluding of an employment agreement for work in areas with special natural geographical and geological conditions and increased health risk conditions; f) concluding of an employment contract¹⁰.

Before an employee starts the work, the employer is obliged to (Art. 29 of the LC): 1) inform an employee about rights, obligations, working conditions, benefits and compensations, dangerous and harmful production factors as well as the possible consequences of their impact; 2) familiarize an employee with the internal labor rules and collective agreement; 3) to indicate employee's workplace, and provide with the necessary means of work; 4) to instruct the employee on OHS, industrial sanitation and fire protection.

4.2 Wages and deductions

The wage is calculated in monetary form (Art. 94 of the LC). The collective agreement, as an exception, may provide for partial payment of a salary in kind not exceeding 30 percent of the whole salary per month,¹¹ which is not aligned with ESS2.

The wages may consist of: basic wage, additional wage payments, and other incentive and compensation payments. Forms and systems of remuneration, labor standards, rates, tariffs, salary schemes, bonuses, rewards and other incentive, compensation and guarantee payments are often provided in the collective agreement.

The salary is to be paid regularly within the time limits established by the collective agreement or regulatory act of the employer, but not less frequently than twice a month for a period not exceeding sixteen calendar days, and not later than seven days after the end of the period for which the payment is made (Art. 15 of the LC).

Minimum wage is guaranteed by the law (Art. 95 of the LC). The amount of the minimum wage is set by the government at least once a year and may not be lower than the subsistence level for persons of working age. The minimum wage is subject to indexation.

¹⁰ A labor contract can be concluded only with particular categories of employees stipulated by laws of Ukraine (directors of legal entities, scientists, employees of public railway transport who provide services to passengers, farm workers).

¹¹ Art. 24 of the Law of Ukraine [“On remuneration”](#)

Deductions from the wages can be made only in cases provided by the legislation (Art. 127 of the LC).

There are three types of deductions (Art. 127 of the LC): i.) mandatory payments (income tax, single social tax, military fee); ii.) deductions made to ensure the fulfillment of obligations to third parties (for example, alimony and other payments under executive documents); iii.) deductions made to cover debts to the company.

Deductions are to be made monthly until the full repayment of the debt. The total amount of all deductions shall not exceed 20 percent, and in cases separately provided by the legislation of Ukraine - 50 percent of the monthly salary (Art. 128 of the LC).

The employer shall notify the employee about (Art. 110 of the LC): i.) the total amount of the salary with a breakdown by type of payment; ii.) the amount and grounds of deductions; iii.) the amount of the actually salary to be paid. Deductions that are not prescribed by law are prohibited.

The Law of Ukraine “On remuneration of labor” (article 1) defines wage as remuneration usually calculated in monetary terms which the employer pays to the employee for the work he has done according to the labor contract. The remuneration consist of main salary – remuneration for performed work according to the established norm of labor (working time, working performance, etc.) and of additional salary- remuneration for outstanding deliverables or performance or for harmful working conditions. Pursuant to Article 3 of abovementioned Law, the minimum level of salary – it is fixed by legislation level of remuneration for month or hour. In case if the salary level of an employee who has fulfilled the monthly deliverables is lower than the established minimum wage, the employer makes an additional payment up to the level of the minimum salary. As of November 2020, the minimum salary level 5000 UAH (approx. 176 USD). The employers usually deduct the income tax and military tax automatically from the wages and transfer them to the appropriate fiscal authorities, and pay additionally social insurance contributions for each employee.

4.3 Working Hours

The Labor Code of Ukraine (Article 50) envisages a regular 40-hour work week. Reduced working hours shall be established (Article 51 of the LC of Ukraine):

- for employees aged from 16 to 18 years old - 36 hours per week, for persons aged from 15 to 16 years old (pupils aged from 14 to 15 years old working within the period of vacations) - 24 hours per week.
- for employees performing works in harmful working conditions – not more than 36 hours per week

In addition, legislation shall prescribe for reduced working hours for certain categories of employees (teachers, doctors, etc)

Reduced working hours may be established at the expense of own funds of enterprises and organizations for women having children under fourteen years old or disabled child.

According to the article 54 of Labor Code, when working at night the established working hours (shift) shall be reduced by one hour.

Working hours at night shall be put in a par with those during the day if this is required subject to conditions of production, in particular in continuous productions, as well as when working in shifts at six-day working week with one day-off. Night working hours shall be from 10:00 p.m. until 06:00 a.m.

Part-time work may be established by agreement of the parties or at the initiative of the employer (Art. 56 of the LC). Moreover, an employer is obliged to establish part-time work at

the request of a pregnant woman, a woman who has a child under the age of 14 or a disabled child. Employees shall receive payment for part-time work in proportion to the actual worked hours. Part-time work does not affect restrictions on the scope of employee's rights. If the introduction of part-time work is initiated by the employer, they are required to notify the employee not later than 2 months before the establishment of new working conditions

Engagement of women in work at night shall not be allowed, except for those branches of national economy in which this is of particular necessity and is allowed as temporary measure. Engagement of pregnant women and women having children under three years old may not be engaged in night works, overtime works, works on days-off, and business trips. Women having children aged from three to fourteen years old or disabled children may not be engaged in overtime works or sent on business trips without their consent. (Labor Code, articles 175-177).

In general, the law prohibits the overtime work, and allows overtime work only in the following exceptional cases (Art 62, LC): a) emergency situations; b) carrying out socially necessary works on water supply, gas supply, heating, lighting, sewerage, transport, communication; c) to perform loading and unloading operations in order to prevent or eliminate downtime of rolling stock or accumulation of goods; d) to complete the work, which due to unforeseen circumstances or accidental delay could not be completed later during normal working hours and the delay may lead to damage of state or public property; e) to continue the work in the absence of the employee, who carries out this work permanently, when the nature of work does not allow a break.

Overtime work of one employee shall not exceed 4 hours in total for every two consecutive days and 120 hours in total per year (Art. 65 of the LC). The employer is obliged to keep records of overtime work of each employee.

Remuneration for overtime work is paid in double amount. It is not allowed to provide a day off as compensation for overtime work (Art. 106 of the LC).

There is a possibility to establish non-fixed working time in cases of impossibility to estimate duration of workday for a certain category of workers.¹² The employer provides for a list of positions and categories of workers with non-fixed working time in the collective agreement.

As mentioned above, night work is considered as a work starting from 22:00 to 6:00. Working time at night is reduced for one hour (Art. 54 of the LC).

The following categories of employees are prohibited to be engaged in work at night: i.) pregnant women and women with children under the age of 3; ii.) minor employees; iii.) other categories of employees provided by law.

Night work is paid at the increased amount indicated by the general, branch (regional) agreements and collective agreements, but not less than additional 20 percent of the salary for each hour of work at night (Art. 108 of the LC).

4.4 Rest Period

Employees shall be provided with break for rest and meal lasting not more than two hours. The break shall not be included into working hours. The break for rest and meal shall be usually provided in four hours after start of work. Time of start and end of the break shall be established

¹² [Point 1 of the Recommendations "On the procedure for granting employees with non-fixed working day annual additional leave for the special nature of work", approved by the order of the Ministry of Labor, dated 10.10.97 No 7](#)

by internal regulations. Employees shall use the break time at their own discretion. During this time they may be absent from the workplace. (article 66 of Labor Code).

The duration of the weekly uninterrupted rest shall be at least forty-two hours (Art. 79 of the LC). Employees, working a five-day working week are granted two days off per week, and those working six-day per week – one day. The common day off is Sunday. The second day off is to be indicated by the schedule of an enterprise (Saturday or Monday).

Working during rest days is prohibited. Engaging employees to work during rest days is allowed only with permission of the trade union of the enterprise in exceptional cases provided (Art. 71 of the LC).

If the employees are required to work on rest days, they have the right to another day off or a monetary compensation in double amount (Art 72 of the LC).

4.5 Days-off

At five-day working week employees shall be provided with two days-off per week, and at six-day working week – with one day-off. Uninterrupted weekly rest period shall be at least forty two hours.

Work on days-off shall be prohibited. Engagement of certain employees in work on these days shall be allowed only subject to permit of the elective body of primary trade union organization (trade union representative) of enterprise, institution or organization and only in exceptional cases which are determined by legislation.

Engagement of particular employees in work on days-off shall be allowed in the following exceptional cases:

1) for prevention or liquidation of consequences of natural disaster, epidemics, epizootics, industrial accidents and immediate remedy of their consequences;

2) for prevention of accidents which endanger or may endanger life or normal living conditions of people, loss or damage of property;

3) for performance of urgent unforeseen works on which further normal operation of enterprise, institution or organization as the whole or separate subdivisions thereof depends;

4) for performance of urgent handling operations in order to avoid or prevent downtime of rolling equipment or accumulation of cargo in departure and destination points.

Engagement of employees in work on days-off shall be effected on the ground of written order (instruction) of the owner or authorized by him/her body.

Work on day-off may be compensated for as agreed by the parties by providing another rest day or in monetary form in double amount. (Labor Code, Articles 66-71)

4.6 Leaves

Citizens having labor relations with enterprises, institutions or organizations irrespective of ownership form, kind of activity and industry, as well as those working under labor contract with individual shall be provided with annual (basic and additional) leaves with preservation of workplace (office) and salary for their periods.

The Law of Ukraine “On Leaves” stipulates the types of leaves. It could be:

- 1) annual leaves
 - main leave;
 - additional annual leave for work in harmful and difficult working conditions;
 - additional annual leave for irregular working hours;

- Additional leave for victims of Ukrainian revolution of 2014 ¹³(Labor Code, article 77).
- 2) leave for studying, pregnancy and child birth;
- 3) research leave;
- 4) maternity leave;
- 5) payless vacation;

The total duration of annual basic and additional leave may not exceed 59 calendar days, and for employees employed in mining industry - 69 calendar days (Law “On Leaves” article 10).

Annual basic leave shall be given to employees for the period of at least 24 calendar days per working year worked to be calculated as from the date of entering into labor contract. Persons aged under eighteen years old shall be given annual basic leave for the period of 31 calendar day. (Labor Code, Articles 74-75).

Other paid and unpaid leaves or rest and illness leaves granted by the employer within the year shall not be set off from the annual leave.

National festivals, week holidays and general holidays coinciding with the leave period shall not be counted in the leave period in calculating the days of annual paid leave (Labor Code, articles 77-78).

Because of the COVID-19 spreading, the new updates in Labor Code (article 84) from March 2020 have been provided. It indicates that in case Cabinet of Ministers of Ukraine carry out a quarantine, the period of unpaid vacation is not limited to 15 calendar days. It means that an employee may be granted an unpaid vacation upon his/her consent for the entire period of quarantine established by the Cabinet of Ministers of Ukraine.

4.7 Minimum Age of Employment and Child Labor

Ukraine has ratified the Minimum Age Convention. The Ukrainian laws set that the minimum age for a person to be employed is **16 years** (Art. 188 of the LC). Children who have reached the **age of 15**, as an exception, can be employed upon parent’s consent (Art. 188 of the LC). Moreover, employment of children is allowed upon reaching the age of 14 with a parent’s consent. Children have a possibility to perform light work that does not harm their health and does not disrupt the learning process and also shall be fulfilled in their free time (Art. 188 of the LC). However, the law does not clearly define the categories of light work. The Ukrainian law does not provide for the possibility of employing children under 14 years old. The exploitation of children who have not reached the employment age by using their labor is prohibited (Art. 150 of the Criminal Code of Ukraine).

The procedure of children’s employment is determined by the labor legislation of Ukraine.¹⁴

An employee shall not be admitted to work without concluding an employment agreement. A minor employee is required to submit:

- a passport or other identity document;
- employment record book;
- and in cases provided by law - a document on education (specialty, qualification), health status and other documents (Art. 24 of the LC).

¹³ The Ukrainian revolution of 2014 (also known as the Euromaidan Revolution or Revolution of Dignity) took place in Ukraine during November 2013 - February 2014, when a series of violent events involving protesters, riot police, and unknown shooters in the capital, Kyiv, culminated in the ousting of the elected Ukrainian President and the overthrow of the Ukrainian Government.

¹⁴ Art. 21 of the Law of Ukraine [“On the Protection of Childhood”](#)

Employment agreement with minor employees shall be concluded in writing exclusively (Art. 24 of the LC). Each legal entity shall keep special records of employees under the age of 18, indicating the date of their birth (Art. 189 of the LC).

All persons under the age of 18 can be hired only after a preliminary medical examination. Moreover, employees under the age of 21, are subject to mandatory medical examination every year.¹⁵ The owner of a company is obliged to conduct regular monitoring of employees' working time (Art. 60 of the LC). The Ukrainian legislation does not provide for specific risk assessment and monitoring of children's working time and working conditions as per ESS2.

Minor employees are not allowed to be put under probation period (Art. 26 of the LC). The employment of minors for work under hazardous conditions is prohibited.¹⁶ Minor employees cannot be employed to perform:

- heavy works and works under harmful or hazardous working conditions;
- underground works;
- work during the night;
- overtime works and works on weekends;
- lifting and moving of things, which weight exceeds the established limits.¹⁷

The Decree of the Ministry of Health of Ukraine¹⁸ provides a hazardous work list (list of jobs and works, that can be performed by minors, inter alia works underground, underwater, or working with dangerous machinery, equipment or tools). This Decree provides for few exemptions and allows employment of children of 17 years old to some hazardous works. Furthermore, students of technical schools (vocational educational institutions) can be engaged in hazardous work as part of a vocational training program for 4 hours a day under labor protection rules. Minor employees can be engaged in industries and works related to the chemical industry upon permission of the head of the legal entity. Such provisions allowing persons of the age of 17 years to be engaged in some forms of hazardous work represent a gap with ESS2 requirements.

Limits regarding lifting and moving of heavy items by minors were approved by the Decree of the Ministry of Health of Ukraine¹⁹. This requirement shall be abided by both legal and natural persons using labor of minors aged between 14 and 18. The Decree provides for a prohibition to employ minors to perform work connected solely with lifting, holding or moving of heavy items. However, minors having no medical contraindications are allowed to perform work that requires lifting and moving of heavy items. Minors under the age of 15 are not allowed to perform long-term work that consists of lifting and moving of heavy items. It is envisaged that minors' work with loads shall not exceed 1/3 of their working time. Such provisions are not aligned with ESS2 requirements.

Children who have reached the age of 15 can be hired without compromising their health and education. The working time for children under the age of 16 is limited according to their developmental needs and vocational training needs.²⁰ A shorter working time is established for: a) employees between 16 and 18 years – up to 36 hours per week; b) employees between 15 and 16 years – up to 24 hours per week. The working hours of students who work during the school year in

¹⁵ Art. 191 of the [LC](#); [Decree of the Ministry of Health of Ukraine "On approval of the Procedure for medical surveys of employees of certain categories"](#)

¹⁶ Art. 43 of the [Constitution of Ukraine](#)

¹⁷ [Art. 11 of the Law of Ukraine "On Labor Protection"](#) and [Art. 21 of the Law of Ukraine "On the Protection of Childhood"](#)

¹⁸ [Decree of the Ministry of Health of Ukraine "On approval of the List of heavy works and works with harmful and hazardous working conditions, on which the use of minors labor is prohibited"](#)

¹⁹ [Decree of the Ministry of Health of Ukraine "On the approval of limiting norms of lifting and moving of heavy items by minors"](#)

²⁰ [Art. 21 of the Law of Ukraine "On the Protection of Childhood"](#)

their free time cannot exceed half of the maximum working time mentioned above for persons of the respective age (Art. 51 of the LC). Minors' wages are equivalent to the wages of full-time employees (Art. 194 of the LC). Persons under the age of 18 are provided with an annual basic leave of 31 calendar days.²¹ Minor employees are entitled to vacations at any time of their choice.²²

An employer may terminate employment of a minor employee only upon the consent of the local state committee for juveniles (Art. 51 of the LC).

4.8 Overtime Work

An employer can order overtime work in case that is related to national defense or emergencies.

According to Labor Code (Article 62) The employer or authorized by him/her body may use overtime work only in the following exceptional cases:

- performance of works required for country defense, as well as for rehabilitation of public or natural disaster, industrial accident and immediate remedy of their consequences;
- performance of publicly important works on water and gas supply, heating, illumination, sewerage, transport, communications – to remedy incidental or unexpected circumstances preventing their proper functioning;
- in case of necessity to complete the work started which as the result of unforeseen circumstances or accidental delay according to production conditions could not be completed within normal working hours, when termination thereof may result in damage or loss of state or public property, as well as in case of need in immediate repair of mechanisms, machines or other equipment when their failure causes stoppage of works for significant number of workers;
- in case of necessity to perform handling operations for prevention or removal of downtime of rolling equipment or accumulation of cargo in departure and destination points;
- to continue work in case of non-appearance of employee who shall take shift when work may not be interrupted; in these cases, the owner or authorized by him/her body shall be obliged to take immediate measures as to replacement of alternate with other employee.

In Overtime work (Labor Code, Article 62) shall not be engaged:

- 1) pregnant women and women having children under three years old (Labor Code, Article 176);
- 2) persons under eighteen years old (Labor Code, Article 192);
- 3) employees studying in comprehensive schools and vocational schools while continuing to work, during school days (Labor Code, Article 220).

Women having children aged from three to fourteen years old or disabled child may be engaged in overtime work only subject to their consent (Labor Code, Article 177).

Engagement of disabled in overtime work shall be possible only subject to their consent and provided that this is in compliance with medical recommendations (Labor Code, Article 172)

Overtime works may be performed only on the ground of permit of the elective body of primary trade union organization (trade union representative) of enterprise, institution or organization (Labor Code, Article 64)

²¹ [Art. 6 of the Law of Ukraine "On vacations"](#)

²² [Art. 11 of the Law of Ukraine "On vacations"](#)

As mentioned above, overtime work shall not exceed four hours during two successive days and 120 hours per year for every employee. The owner or authorized by him/her authority shall keep record of overtime work of every employee (Labor Code, Article 65).

The overtime work is paid at double amount of the regular hourly rate for the first two hours of overtime work and at 2 times the regular rate for the subsequent hours (Labor Code, Article 106).

4.9 Labor Disputes

There are two kind of labor disputes in Ukraine: (1) individual labor disputes (disagreement between an employee and employer – Art. 221 of the LC) and (2) collective labor disputes (differences that have arisen regarding: the establishment or change of working conditions, conclusion or amendment of a collective agreement, implementation of the collective agreement or its specific provisions and non-compliance with labor legislation²³).

Individual labor disputes are considered by (1) labor dispute commissions (LDC) (an authorized body created at a particular enterprise) and (2) courts. An employee may apply to LDC or directly to the court for a labor dispute settlement. In case of LDC's absence at a particular enterprise, a labor dispute is to be considered directly by the respective court.

LDC is a mandatory primary authority to consider labor disputes (if the total staff number is at least 15 people), which deals with all categories of disputes, other than those falling within the exclusive competence of courts (Art. 224 of the LC). LDC is comprised of the elected persons at the enterprise (at least half of them shall be employees of the enterprise) (Art. 223 of the LC). Despite the fact that LDC is defined as a mandatory body, it is an employee's right, not an obligation to apply to the LDC before initiating proceedings before courts (Art. 233 of the LC).

An employee may apply to the LDC within three months after he/she has or should have found out about the infringement of his/her right and, in the case of salary disputes, an employee shall not be limited in time. It should be stressed that the LDC may restore the set period of time if such period of time is not met for valid reason. Employee's application is registered by the LDC (Art. 225 of the LC).

LDC shall consider employee's application within 10 days after its receipt and notify employee about the rendered decision within three days (Art. 226 of the LC). LDC's decision is binding and shall be executed within 13 days after its rendering in case it was not appealed before the court (Art. 229 of the LC).

Ukrainian courts have exclusive jurisdiction over certain kinds of labor disputes (Art. 232 of the LC): at the enterprises, at which there is no LDC established, over reinstatement of employees, over registration of labor relations in case of work performance without the conclusion of the employment contract, over implementation of labor laws, over denial of employment to certain categories of workers, who are protected by laws from denial of employment (pregnant women, women with children under the age of three or a child with a disability, single mothers (parents) with children under the age of fourteen, young specialists after graduation, who were directed by their institution to work at the enterprise in accordance with concluded contracts, employees who had proof of employment by means of transfer from another enterprise). These kinds of labor disputes cannot be settled by LDC.

Collective labor disputes are considered by (1) conciliation commission (a body intended to develop a solution that can satisfy the parties to a collective labor dispute and shall be comprised

²³ Art. 2 of the [Collective Dispute Law](#) dated March 03, 1998 No 137/98-BP

of representatives of the parties) and (2) labor arbitration board (a body consisting of specialists, experts and others appointed by the parties, which rules on the substance of a labor dispute).

A conciliation commission is authorized to consider disputes regarding the establishment or change of working conditions and conclusion or amendment of a collective agreement²⁴.

A labor arbitration board is authorized to consider disputes regarding implementation of the collective agreement or its specific provisions, non-compliance with labor legislation as well as regarding issues within the competence of a conciliation commission in case of its failure to provide a ruling on the settlement of a collective labor dispute²⁵.

Both the decision of a conciliation commission and ruling of a labor arbitration board shall be binding.

4.10 Trade unions

According to the Constitution of Ukraine and Law of Ukraine “On trade unions, their rights and guarantees of activity”²⁶, the citizens of Ukraine have the right, on the basis of free will, without any permission to form trade unions for the purpose of representation, exercise and protection of their labor and socio-economic rights and interests, to enter into and withdraw from them. The State recognizes trade unions as authorized representatives of workers and defenders of their rights in State, local and self-government bodies.

According to the Law “On trade unions, their rights and guarantees of activity” the trade unions has a following rights:

- represent and defend interests of their members (Article 19)
- collective negotiations and the conclusion of collective agreements (Article 20);
- executive of public control over compliance with labor law (Article 21);
- ensuring employment of the public (Article 22);
- ensuring social defense and high level of life (Article 23);
- social insurance (Article 24);
- representation of employees in labor disputes (Article 26);
- organization of strikes and other mass events (Article 27);
- creation of educational, cultural and research organizations (Article 29);

5. BRIEF OVERVIEW OF LABOR LEGISLATION: OCCUPATIONAL HEALTH AND SAFETY

The health and safety requirements in Ukraine stipulated by the Law of Ukraine “On Labor protection”. The Law of Ukraine “On Labor Protection” defines basic provisions concerning implementation of the employees' constitutional right to protection of their life, health in the course of labor activity, to the proper, safe and healthy working conditions and regulates relations between the employer and the employee on security, occupational hygiene and working surroundings issues. Besides, the Law sets a unified procedure of labor protection in Ukraine.

This Law shall apply to all legal entities and natural persons who in compliance with the legislation use hired labor, as well as to all employees. The Law sets responsibility of the employer for creation of safe working conditions, for state of collective and individual means of

²⁴ Art. 8-9 of the [Collective Dispute Law](#)

²⁵ Art. 11-12 of the [Collective Dispute Law](#)

²⁶ Law # 1045-XIV, adopted on September 15, 1999

protection from harmful influence of manufacturing mechanisms and equipment, as well as for observation of the norms of labor protection.

The Law entitles the employees to refuse doing work, if working situation is dangerous for his life or health (Article 6). They shall also enjoy the right to privileges and compensations for difficult and harmful working conditions and to compensation of damage caused by violation of labor protection rules (Article 7). It is established that damage to the employee's health or in case of his/her death shall be compensated by the Industrial Accident and Occupational Disease Social Insurance Fund of Ukraine. Besides, it is provided for that in compliance with collective or labor agreement the employer may make additional payments to the injured persons or members of their families at the expense of own funds (Article 9).

The Law regulates the question of labor protection of separate categories of employees: women, minors and disabled (Articles 10-12). In particular, the Law prohibits the use of women's work at difficult jobs and jobs with harmful and dangerous working conditions, underground jobs except for non-physical jobs and jobs connected with sanitary and consumer services. It is also prohibited the recruitment of women for lifting and transportation of things which weight exceeds set for them limits.

A separate chapter of the Law is devoted to regulation of relations in the sphere of labor protection management (Chapter 3). The chapter defines system of bodies of state power authorized to manage this sphere of legal relations. To these bodies the Law refers the Cabinet of Ministers of Ukraine, specially authorized body of executive power on supervision over labor protection, ministries and state committees within the limits of their authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations and bodies of local self-government. The Law contains provisions which set competence of the above bodies and their authorized officials. The Law envisages that penalty shall be imposed by bodies of state supervision over labor protection according to set by law procedure for violation of the legislation on labor protection, non-fulfillment of instructions of officials of bodies of state supervision over labor protection, legal entities and natural persons which according to the legislation use hired labor.

Training of employees and provision of personal protective equipment (PPE)

Upon employment and in the course of work, workers shall receive, at employer's expense, instructions and training on OHS, on provision of first aid to accident victims, and on safety rules in case of accidents.²⁷

Employees engaged in high-risk jobs shall annually undergo special training at the expense of the employer and check their knowledge of the relevant legal acts on labor protection.²⁸

The training on OHS includes: a) instructions; b) training on OHS, on provision of first aid to accident victims, and on rules of conduct in case of accidents; c) special training for high-risk jobs.

The procedure for training and testing the knowledge on labor protection issues is defined by Standard regulation on the procedure for training and testing of knowledge on occupational safety.²⁹

²⁷ Art. 18 of the Law of Ukraine ["On Labor Protection"](#)

²⁸ Art. 18 of the Law of Ukraine ["On Labor Protection"](#)

²⁹ [Standard regulation on the procedure for training and testing of knowledge on occupational safety \(NPAOP 0.00-4.12-05\), approved by the Order of the State Committee for Labor Protection Supervision, dated 26.01.05 No. 15](#)

The employer shall provide free of charge special clothing, special footwear and other personal protective equipment (PPE) to employees, working under harmful and dangerous working conditions, as well as performing of work related to pollution or in adverse temperature conditions. In addition, such PPE are to be provided to employees, who are involved in work related to the elimination of the consequences of accidents, and natural disasters.³⁰

In instances when the PPE is dysfunctional, without employee's responsibility, the employer is obliged to replace PPE at their own expense. If the employee purchases PPE at their own expense, the employer is obliged to reimburse such expenses.³¹

The employer shall organize (1) regular medical examination of employees, who perform heavy work, work under harmful or dangerous working conditions, and (2) annual compulsory medical examinations of persons under the age of 21 at its own expense.³²

Provision of workers' insurance in instances of injuries, fatalities, disability and disease

All employees are subject to mandatory state social insurance against accidents at work and occupational diseases that may cause disability.³³ The Social Insurance Fund of Ukraine³⁴ provides the financial support to the insured persons.

The following categories of workers are subject to state social insurance against accidents at work and occupational diseases:³⁵

1. employees working under the employment agreement and contract, civil agreement, and on other grounds provided by law, at enterprises, institutions, organizations, regardless of ownership;
2. pupils and students of educational institutions, clinical residents, graduate students, doctoral students involved in any work during, before or after classes; during classes, when they acquire professional skills; during the period of internship, work at enterprises;
3. persons who are detained in correctional facilities and are involved in labor activity.

Employees working under difficult and harmful working conditions are to be provided with free of charge medical and preventive nutrition, milk, carbonated salt water. Moreover, they are entitled to paid health breaks, reduction of working hours, additional paid leave, increased wages and other benefits and compensations provided in the manner prescribed by law.³⁶

The labor protection of minors, women and persons with disability

Women and minors shall not be engaged in heavy, underground works and works under harmful or dangerous working conditions as well as works that require lifting and moving of heavy items exceeding the established limits. Minors can be hired only after medical examination.³⁷

Enterprises that use work of disabled persons are obliged to create relevant working conditions and implement recommendations of the medical and social expert commission.³⁸

Reporting of occupational accidents, diseases and incidents

³⁰ Art. 163 of the LC and Art. 8 of the Law of Ukraine "[On Labor Protection](#)"

³¹ [Minimum requirements of safety and health in the use of personal PPE at the workplace, approved by the Order of the Ministry of Social Affairs of Ukraine, dated 29.11.2018 No 1804](#)

³² Art. 17 of the Law of Ukraine "[On Labor Protection](#)"

³³ Art. 5 of the Law of Ukraine "[On Labor Protection](#)"

³⁴ The Law of Ukraine "[On State Social Insurance](#)"

³⁵ Art. 18 of The Law of Ukraine "[On State social insurance](#)"

³⁶ Art. 7 of the Law of Ukraine "[On Labor Protection](#)"

³⁷ Art. 10, 11 of the Law of Ukraine "[On Labor Protection](#)"

³⁸ Art. 12 of the Law of Ukraine "[On Labor Protection](#)"

Upon receiving information about occupational accidents, diseases and incidents from either the work administrator, or the health care institution, or a victim, or members of their family or their authorized representative, the employer is obliged to notify within 2 hours (by use of any means of communication) and not later than on the next working day (in writing), the following agencies:

- territorial body of the State labor service;
- the Social Insurance Fund;
- the head of the primary trade union organization;
- the authorized body or Supervisory Board of the enterprise (in case of its formation);
- the State emergency service in case the accident occurred as a result of a fire.

If an accident and/or an occupational disease is subject to special investigation, employer is obliged to notify the following agencies additionally:

- local state administration or local self-government body (in the absence of an authorized body or Supervisory Board of the enterprise);
- the highest-level branch of trade union, and in case of its absence – the territorial Trade Union Association;
- the police in the case of an accident or occupational disease led to serious or fatal consequences, death of employees during the performance of their duties.

Investigation of occupational accidents and/or diseases

The employer shall keep records of accidents and/or occupational diseases.³⁹

The investigation of the accident is conducted by the commission of the enterprise within 5 working days from the date of its formation; the special investigation of the accident is carried out within 15 working days. The commission can issue documents to formalize accidents and/or occupational diseases.

As a result of the investigation of an occupational accident and/or disease, the employer prepares an internal decision in the prescribed form, and one copy must be issued to the victim or other interested person no later than three days after the end of the investigation.

The record of occupational accidents/diseases is provided by:⁴⁰

- enterprises, management bodies and supervisory boards of the enterprise (if they are created);
- the Social Insurance Fund — regarding accidents that were investigated by representatives of the Fund.

The record of accidents in the enterprise is reported in the files of persons who have suffered from accidents/occupational diseases at work. State labor service, its territorial bodies and local state administrations keep operational record of accidents that are subject to special investigation.

Emergency prevention, preparedness and response arrangements to emergency situations

³⁹ Art. 22 of the Law of Ukraine “On Labor Protection”

⁴⁰ Paragraph 63 of the Order “On investigation and recording of occupational accidents, diseases, and emergencies”, approved by the Resolution of the Cabinet Ministers of Ukraine, dated 17.04.2019 No 337

In Ukraine the State emergency service carries out monitoring and forecasting of emergencies for the purpose of emergency prevention.⁴¹

Training of the employees on how to act in emergency situations is mandatory and is carried out during working hours at the expense of the employer. Employees who are hired for work with increased fire danger level should undergo special training (fire technical minimum). In case of emergencies and accidents at the enterprise, the employer provides urgent measures to evacuate workers, provide first aid to victims, localize and eliminate accidents or fires, eliminate their consequences, if necessary, he involves external emergency services, professional rescue services, fire departments⁴².

The employers develop and approve instructions on the appropriate actions in the event of a threat or emergency.⁴³ Moreover, there is a list of specific requirements to adopt plans and procedures regarding fire safety (evacuation plans).

Contractors OHS responsibilities and collaboration

The employer is obliged to organize the functioning of the labor protection system at the enterprise, namely⁴⁴:

- to establish appropriate services to resolve specific issues of labor protection, approve instructions on their duties, rights and responsibilities;
- to introduce advanced technology, safe machinery and equipment;
- to ensure proper maintenance of buildings and structures, production equipment and facilities;
- to investigate and to record occupational accidents, to report occupational accidents and diseases to the competent authorities;
- to implement preventive measures upon the results of the investigation on occupational accidents;
- to organize audits of labor protection, laboratory tests of working conditions;
- to provide instruction and special training to workers.

At an enterprise employing 50 or more persons, the employer is required to establish labor protection service, according to the standard regulation⁴⁵. At an enterprise employing less than 50 persons the functions of occupational safety and health service can be transferred as a secondary job to persons, who have passed proper training. An enterprise employing less than 20 persons, the employer may engage third party as an occupational safety specialist for the performance of functions of the labor protection service on a contractual basis.

Cooperation between employers in the field of OHS is provided by the General requirements on employer's labor protection of workers.⁴⁶ Ukrainian legislation provides for a cooperation between employers, working at enterprises that are carrying out joint activity at the same territory or in the same working area. Collaboration of employers of construction projects are required by law.

⁴¹ Art. 43-49 of the [Code of Civil Defense](#), dated 02.10.2012 № 5403-VI

⁴² Art. 2.4 of the [General rules on employer's labor protection of workers, approved by the Order of the Ministry of Emergencies of Ukraine dated 25.01.2012 No 67](#)

⁴³ Art. 130 of the [Code of Civil Defense](#), dated 02.10.2012 № 5403-VI

⁴⁴ Art. 13 of the [Law of Ukraine "On Labor Protection"](#)

⁴⁵ [Standard regulation "On Labor Protection Service NPAOP 0.00-4.35-04"](#), approved by the Order of the State Labor Inspectorate of Ukraine, dated 15.11.2004 No 255

⁴⁶ Art. 2.6. of the [General requirements on employer's labor protection of workers, approved by the Order of the Ministry of Emergencies of Ukraine dated 25.01.2012 No 67](#)

Employees of other enterprises, who are involved in a particular activity shall undertake a medical examination and training on labor protection. Such workers shall be provided with necessary personal protective equipment.⁴⁷

Protection of labor and industrial safety in construction (SBN A.3.2-2-2009) system of standards⁴⁸ provides for designation of a contractor that is responsible for labor protection in the project (in case of work performing by several organizations - the general contractor), who is obliged to:

- allow admission to work only of those subcontractors (contractors) who have a permit to perform high-risk work;
- develop a schedule of joint work and measures for safe work together with subcontractors (contractors), who are involved in the work. These measures are mandatory for all organizations involved in the construction;
- identify dangerous areas on the construction site and mark them with appropriate signs;
- coordinate the contractors` compliance with labor protection requirements;
- monitor the compliance of subcontractors` employees with decisions on health and safety;
- ensure that third parties are not allowed to enter the construction site;
- ensure the registration of all persons, who enter or leave the construction site.

6. ESS2 AND POLICY GAP

6.1 ESS2 – LABOR AND WORKING CONDITIONS REQUIREMENTS

The World Bank`s requirements related to labor and OHS are stipulated in the ESS2 of the Environmental and Social Framework. The Implementing agency promotes sound worker-management relationships and provides safe and healthy working conditions. Key objectives of the ESS 2 are to:

Promote safety and health at work;

Promote the fair treatment, nondiscrimination and equal opportunity of project workers;

Secure protection of project workers, including vulnerable workers such as women, persons with disabilities, children (of working age, in accordance with this ESS) and migrant workers, contracted workers, community workers and primary supply workers, as appropriate;

Prevent the use of all forms of forced labor and child labor;

Support the principles of freedom of association and collective bargaining of project workers in a manner consistent with national law; and

Provide project workers with accessible means to raise workplace concerns.

ESS2 applies to direct and contracted workers employed by the project PIUs and contractors (fulltime, part-time, temporary, assignment-based and migrant workers). Where government civil servants are working in connection with the project, whether full-time or part-time, they will

⁴⁷ [Art. 2.6. of the "General requirements on employer`s labor protection of workers"](#), approved by the Order of the Ministry of Emergencies of Ukraine dated 25.01.2012 No 67

⁴⁸ [Protection of labor and industrial safety in construction \(SBN A.3.2-2-2009\)](#)

remain subject to the terms and conditions of their existing public sector employment agreement or arrangement, unless there has been an effective legal transfer of their employment or engagement to the project. ESS2 will not apply to government civil servants.

PIU will develop and implement internal labor management procedures applicable to the project. These procedures will set out the way in which project workers will be managed, in accordance with the requirements of national legal framework and the ESS2. The procedures will address the way in which the ESS2 will apply to different categories of project workers including direct workers, and contract workers.

Project workers will be provided with information and documentation that is clear and understandable regarding their terms and conditions of employment. The information and documentation will set out their rights under national labor law and ESS requirements (which will include collective agreements), including their rights related to hours of work, wages, overtime, compensation and benefits. This information will be provided at the beginning of the working relationship and when material changes occur.

For more details on the WB Environmental and Social Standards, please follow the below links: www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards.

6.2 Policy Gap

The Ukrainian labor protection, working conditions and OHS legislation is advanced and reflects all the key requirements of the ESS2.

The enforcement of the labor protection and OHS provisions, however, need to be improved. In addition, employees' awareness about their labor and OHS rights remains low. Labor management procedures at enterprise level, capacity building of workers remain an issue.

7. RESPONSIBLE STAFF

The overall responsibility for the implementation of all aspects of the project lie with the Ministry of Education and Science (MoES). The MoES will establish a Project Implementation Unit (PIU) which will be responsible for the project implementation on a daily basis.

The PIU will employ the Project Coordinator, Environmental and Social Specialist (with Public Liaison/GRM responsibilities and labor safety OHS Supervision functions), Procurement Specialist, Financial Management Specialist who will be in place within sixty days of Project effectiveness. Both the MoES and the World Bank team expect the PIU will be enhanced with other additional staff including environmental and social safeguards consultants to implementation and monitor the enforcement of the World Bank's Environmental and Social Safeguards standards. Alternatively, the functions may be reallocated to the existing consultants.

The Project Coordinator in the PIU will be responsible for implementing the labor management procedures concerning the direct workers.

The PIU Environmental and Social Specialist (a person hired/designated within the PIU with Public Liaison/GRM and labor safety and OHS responsibilities), will be responsible for the following aspects of the labor management procedures:

- Ensure that ESMP developed for each selected HEI renovation project. Ensure that OHS requirements and labor safety procedures are described in details and comply with ESS2 and the national standards.
- Ensure that bidding documents include OHS and labor management requirements.

- Ensure that contractor(s) responsible for the civil works under the project prepare the OHS plan to meet the requirements of national occupational health and safety regulations before the start of the works.
- Monitor regularly that the Contractor(s) are meeting contractual obligations towards contracted and sub-contracted workers as included in the General Conditions of Contract the World Bank Standard Bidding Documents, and in line with ESS2 and the national Labor Code.
- Monitor that OHS standards are met at work places in line with national occupational health and safety legislation and Occupational Health and Safety Plan.
- Ensure that the workers for all contractors and subcontractors are aware about the grievance redress mechanism.
- Review the LMP and OHS plans in order to adapt them to the requirements of the project activities.
- Ensure that grievances are registered and addressed properly by the appropriate party.

The Environmental and Social Specialist will oversee labor and safety performance on a regular basis (daily) in person and/or hire supervision consultants particularly when civil works will start on selected HEI. Supervision Consultant(s) (if envisaged by the project) will be responsible for the following:

- Monitor and report on implementation of project contractors' labor management procedures
- Maintaining records of recruitment and employment process of contracted workers.
- Communicating clearly job description and employment conditions to contracted workers
- Having a system for regular review and reporting of labor, and occupational safety and health performance on site.
- Developing and implementing a grievance registration mechanism that would record and address the grievances raised by the workers.
- Delivering regular orientation and OHS training to employees
- Conducting training for employees on COVID-19 protection.

8. POLICIES AND PROCEDURES

This section sets out information on OHS, reporting and monitoring and other general project policies related to the management of project-related labor pool.

All the contractors under the project will have to comply with the Ukrainian legislation requirement of OHS, Labor Code and labor related laws as well as the provisions set under the World Bank's ESS 2 to manage the risks and hazards that are identified. The contractor(s) will have to prepare or adjust their internal regulations, in case they do not comply with the current legislation. They will also make them known and available to their staff and workers and will cover the following aspects:

- ***Non-discriminatory Nature of Employment***

All the workers hired under the project, whether direct, contracted or sub-contracted, will be employed based on the principles of non-discrimination. As per Article 2.1 of the Ukraine Labor Code, any discrimination based on gender, age, race, ethnicity, political option, social origin, residence, handicap, status or trade union activity, as well as other criteria not related to his professional qualities, shall be prohibited.

- ***Terms of Employment***

All workers will have **written contracts** describing terms and conditions of work. Workers will sign the employment contract in two copies. Terms and conditions of employment will be available at work sites. Each staff or worker will receive a brief orientation covering the contents of the contract; the internal regulations of the institution; the work safety and OHS arrangements in the work place.

- The PIU will have to ensure that all part-time and seasonal construction workers all have written contracts as unpaid overtime work and generally failure to pay individuals who do not have signed contracts is one of the main risks of abuse in the Ukraine construction industry. ***Employee Rights and Obligations***

The section should specify the employee rights in line with the Ukrainian legislation which include, among others, the right to a safe working environment; lunch breaks and rest days; timely payment of wages and salaries; the right to appeal to employers, trade unions and authorities in case of labor disputes; the right to associate freely.

- ***Occupational Safety and Health***

The MoES/PIU will provide a healthy work environment for direct workers and assign an individual who will be responsible for the OHS arrangements at work and on site; describe and explain the main risks of the work involved to the employee; train employees and workers on the OHS arrangements at the enterprise; provide appropriate protective equipment, clothing and gear to mitigate the existing risks; record and report the work incidents on site; ensure that first-aid help is available on site and have emergency and evacuation protocols prepared and explained to staff and workers in case of emergencies.

The MoES will include into the bidding documents specific OHS standard requirements that all contractors and sub-contractors will meet under this project. The standards will be consistent with Ukrainian regulations and norms. The risk/hazards management practice will be required to follow the international best practices, e.g. WBG EHS guidelines (Environment Health and Safety Guidelines) and GIIP (Good International and Industry Practices). The MoES/PIU/HEI and contractors are expected to have a system in place, develop and implement procedures that will keep the work place safe. The MoES/PIU and HEI are expected to detail the OHS requirements and management procedures required in the Environment and Social Management Plans (ESMP) to be developed for each selected HEI renovation project (see ESMF for more details). The OHS requirements and procedures that will be detailed on ESMP for each selected HEI for renovation will enter the bidding documents and require selected contractors to put in place:

- Risk Assessment Procedure;
- Work permitting for hazardous work (working at heights, hot work, work on energized lines, work within confined spaces);
- Golden rules for life threatening works;
- Emergency response procedure;
- Fall prevention and working at heights;
- Excavations safety, Ladders and scaffolders safety; welding and cutting safety; Cranes, Derricks, and forklifts safety; power and hand tools safety;
- Respiratory prevention to chemical and airborne hazards (including dust, silica and asbestos); Electrical safety (hazardous energies control, lock out tag out, energy verification, safe distance work, wiring and design protection, grounding, circuit

protection, arc fault protection, Electrical safety, PPE and dielectric tools); hazards communication; Noise and vibration safety; Steel erection safety; fire safety; material handling safety; concrete and masonry safety;

- Refuse to work policy if working place is deemed unsafe
- Construction personal protective equipment (PPE);
- OHS training;

In addition, occupational health and safety plans, will among other issues, include the following: the construction contractor will define an OHS accountability matrix for all staff including Project manager, contract manager, OHS staff, foremen, and all employees with clear roles and OHS responsibilities. Each Contractor must have its own OHS staff that will be responsible for the implementation and supervision of the OHS program. Contractors will provide a safe workplace, therefore a risk assessment will be completed before the commence of any construction activities, and safety measures will be implemented in accordance with applicable safety standards. PPEs and other preventive measures will be provided at no cost for employees. All employees will strictly follow Golden rules⁴⁹ for life threatening works (OHS rules that cannot be broken in any circumstances), which will be enforced under contractual matrix of consequences. There will be a construction OHS committee with representatives of employees, the Borrower and all subcontractors. Bi - weekly OHS meetings will be conducted to discuss preventive measures, deviations and non-compliances, accidents and corrective actions. Contractors will conduct internal OHS surveys and audits to verify compliance of OHS practices. Non-compliances will be documented and reported internally. A time frame for a corrective action will be set and followed up. Daily OHS briefings will be conducted before the commencement of the works highlighting the hazards and preventive measures from each job. Contractors will document and report to the Borrower all accidents and illness with a day lost or more, fatalities or serious injuries that may happen at the work site. There must be on site resources for first aid and for more serious injuries there must be a pre-approved health facility for medical treatment, as well as appropriate transportation of injured workers. Projects with major civil works should have medical doctor on site. Contractors will control the access to the construction site only to authorized people and verify if workers are meeting training and accreditation requirements in accordance with the set training standards and applicable regulatory requirements (I .e. in many countries truck drivers, crane and derrick operators must be accredited, as well as electricians. Workers must be trained to perform hazardous works such as working at heights, confined spaces, welding etc.). All workers must complete at minimum an OHS induction to have access to the construction site.

If accommodations are provided for workers, Contractors will ensure that they are provided in good hygiene standards, with fresh drinking water, clean beds, restrooms and showers, clean bedrooms, good illumination, lockers, proper ventilation, safe electrical installation, fire and lightening protection, separate cooking and eating areas. There will be separate facilities provided for men and women.

The Supervision Consultant (Environmental and Social Specialist) will conduct periodic supervision of contractor's OHS performance, including site visits, at least monthly and weekly

⁴⁹ Golden rules usually address issues such as work at heights, work in confined spaces, excavation work, personal protective equipment (PPE), system of work permits, lifting, working on powered systems, traffic, work in high risk situations, etc.. Employers should define their Golden rules in accordance with the nature of work.

in case of large infrastructure works. These supervisions will cover compliance with above mentioned standards, accidents, violations of golden rules, recommendations, and progress of ongoing corrective actions. The Borrower will include in the contract(s) as requirement for contractors to report on issues such as number of accidents rates, severity rates, number of recurring non-compliances, violations of Golden rules, fatalities and serious injuries; and penalties for non-completion.

The Supervision Consultant will review and approve contractors' safety plans and procedures.

The Borrower will inform the Bank within 48 hours about any incident or accident related to the project which has, or is likely to have a significant adverse effect on the environment, the affected communities, the public or workers (labor, health and safety, or security incident, accident or circumstance), but no later than three calendar days after the occurrence of the event. Such events can include strikes or other labor protests, serious worker injuries or fatalities, project-caused injuries to community members or property damage. The Borrower will prepare a report on the event and the corrective action and submit to the Bank within 30 calendar days of the event.

The construction contractor will develop and implement a Code of Conduct. The construction contractor should also submit the Code of Conduct to supervision consultant for review and approval. The Code of Conduct will reflect the company's core values and overall working culture. The content of the Code of Conduct is included in the World Bank Standard Bidding Documents and will include provisions relating to SEA/SH prevention.

The contractors will be required to provide the periodic information on the performance in terms of labor, occupational health and safety issues. The information will be included in the construction contractor's monthly report and will be reviewed by the supervision consultant's team.

In addition, the contractor shall report to the Borrower about any inspections and audits carried out by the respective ministries such as the Labor Inspection. The findings of the labor audits will be presented to the Borrower and the Bank, if requested.

9. AGE OF EMPLOYMENT

The minimum working-age in this project will be the age of 18 years. The national legislation prohibits child labor. Persons under the age of 18 years will not be allowed to be engaged in hazardous work.

The contractors will be required to verify the identify the age of all workers. This will require workers to provide official documentation to verify age such as a national identification card, passport, driver's license, birth certificate, valid medical or school records.

If a child under the minimum age is discovered working on the project, measures will be taken to immediately terminate the employment or engagement of the child in a responsible manner, taking into account the best interest of the child.

10. TERMS AND CONDITIONS

The terms and conditions of employment applying to all types of project workers shall be governed by the internal regulations of contractors and suppliers in line with the Ukrainian Labor Code and other labor-related legislation. These terms and conditions will be clearly mentioned in the written contracts for all type of workers, whether full-time or part-time, and be made known to project workers prior to commencement of work.

The work hours are 40 per week for all workers. The number of weekly overtime hours and the payment of overtime shall be governed by the provisions of the Ukrainian Labor Code which is in line with the ESS2 and shall not exceed four hour per week and 120 days per year. The overtime work will be allowed only in circumstances prescribed by the labor code. Overtime hours will be paid at the rate of two times of the base wage. It is not allowed to provide a day off as compensation for overtime work. The contractor is obliged to keep records of overtime work of each employee.

There is no project-wide collective labor agreement.

11. GRIEVANCE MECHANISM

The MoES/PIU will provide a grievance redress mechanism (GRM) for Ukraine Education for Results Project's direct workers to address workplace concerns, submit questions, comments, suggestions and/or complaints and provide any form of feedback on all project-funded activities.

PIU will require contractors to develop and implement a grievance mechanism for their workforce including sub-contractors, prior to the start of works. The construction contractors will prepare their labor management procedure before the start of civil works, which will also include detailed description of the workers grievance mechanism.

The Contractor(s) shall inform their workers, and sub-contractor(s), and display publicly on work-site the information about the existing project GRM which will include:

- a brief description of the GRM mechanism and what it is used for;
- the process to send grievances such as comments/complaints forms via suggestion boxes, email, a telephone hotline with an indication of the email, telephone number, fax; mailing address
- the responsible unit (PIU and/or person) for reviewing the submitted grievances;
- stipulated timeframes to respond to grievances;

All project workers could use the existing project grievance mechanism to raise workplace concerns, report concerns relating to COVID-19, preparations being made by the project to address COVID-19 related issues, how procedures are being implemented, and concerns about the health of their co-workers and other staff.

The GRM has been improved by the PIU to ensure that health and safety concerns are adequately addressed. Existing grievance procedures are used to encourage reporting on COVID-19 related incidents, including on co-workers if they show outward symptoms, such as ongoing and severe coughing with fever, and do not voluntarily submit to testing.

Supervision Consultant (Environmental and Social Specialist) will monitor the contractors' recording and resolution of grievances, and report these to PIU in their monthly progress reports. The process will be monitored by the GRM Focal Point, a PIU representative who will be responsible for the project GRM.

12. CONTRACTOR MANAGEMENT

Whether the Education for Results Project will use the Bank's 2017 Standard Procurement Documents for solicitations and contracts or National Procurement Guidelines, both should include labor and occupational, health and safety requirements that must comply with the Ukraine national legislation and ESS2.

As part of the process to select design and build contractors who will engage contracted workers, the PIU and/or the supervision consultant may review the following information:

- Information in public records, for example, corporate registers and public documents relating to violations of applicable labor law, including reports from labor inspectorates and other enforcement bodies;
- Business licenses, registrations, permits, and approvals;
- Documents relating to a labor management system, including OHS issues, for example, labor management procedures;
- Identification of labor management, safety, and health personnel, their qualifications, and certifications;
- Workers' certifications/permits/training to perform required work;
- Records of safety and health violations, and responses;
- Accident and fatality records and notifications to authorities;
- Records of legally required worker benefits and proof of workers' enrollment in the related programs;
- Worker payroll records, including hours worked and pay received;
- Identification of safety committee members and records of meetings; and
- Copies of previous contracts with contractors and suppliers, showing inclusion of provisions and terms reflecting ESS2.

The PIU generally, and a specific assigned person (e.g. Environmental and Social Specialist) within the PIU, will monitor the performance of Contractor(s) in relation to contracted workers. This may include periodic audits, inspections, and/or spot checks of project locations or work sites and/or of labor management records and reports compiled by contractors. Contractors' labor management records and reports may include: (a) a representative sample of employment contracts or arrangements between third parties and contracted workers; (b) records relating to grievances received and their resolution; (c) reports relating to safety inspections, including fatalities and incidents and implementation of corrective actions; (d) records relating to incidents of non-compliance with national law; and (e) records of training provided for contracted workers to explain labor and working conditions and OHS for the project.

13. COMMUNITY WORKERS

No community contribution is expected under the project and no community workers will be involved in the project's minor works.

14. PRIMARY SUPPLY WORKERS

The project will finance minor rehabilitation works and the primary suppliers will be suppliers of construction materials, tools and equipment. There are little or no risk of child or forced labor or serious safety issues in relation to primary suppliers under the Ukraine Improving Higher Education for Results Project. If there are any risks related to child and forced labor, and safety identified, the PIU will prepare the procedures to address these risks.