

TO: Clients and Friends of the Firm  
FR: Frishberg & Partners  
RE: Reducing the Workforce

## **I. Introduction**

In response to Ukraine's turbulent economic climate, many foreign companies find themselves in need of reducing their work force, pronto. Understandably, some employees often do not wish to leave voluntarily, and have to be carried out, screaming threats laced with obscenities. Although dismissing employees can become an emotionally charged undertaking, Ukrainian law provides a clear procedure for such terminations (whether for cause or due to company downsizing).

In Ukraine, an employer (owner of an enterprise, institution or organization) typically hires employees on a contractual basis. This agreement is referred to as a "labor contract." All relations (including those connected with employment termination) arising from a labor contract are governed in accordance with applicable labor laws and provisions of the collective agreement, where applicable. Such labor relations are documented in each employee's "labor book" as required by law.

The reasons, and hence, the procedure for the dismissal itself, can vary from case to case. Still, it all begins with paragraph 2.3 of the Instruction "On the Procedure for Maintaining Labor Books," as confirmed by joint Decree No. 58 of the Ministry of Labor, the Ministry of Justice and the Ministry of Social Protection, dated July 29, 1993. This documents provides for so-called "dismissal notes," which describe the date and reason for dismissal to be entered into an employee's labor book with a reference to the provision of the law used as the ground for dismissal. Such dismissal notes must be inscribed using the terminology contained in relevant provisions of the labor laws.

Immediately below we describe the different approaches to firing redundant employees, including amicable, hostile and "neutral" terminations. We also describe the procedure for legally terminating unwanted employees and consequences for wrongful termination.

## **II. Discussion**

### **A. Amicable Termination**

Though such situations seldom arise, sometimes parties to a labor contract may peacefully agree to terminate their contractual relations and part ways due to:

1. mutual consent of the parties;
2. expiration of the labor contract, except in cases when labor relations actually continue and neither party has any objections as to termination;
3. military draft or recruitment of an employee;
4. termination of the labor contract at the initiative of the employee, the owner, a body authorized thereby, a trade union, several trade unions or other bodies which are authorized to represent the workers' collective;
5. in case the employee agrees to be transferred to another enterprise, institution or organization or the transfer of the employee to another chosen position;
6. refusal of the employee to be reassigned to another location of the enterprise, institution or organization, or the employee's refusal to work due to significant changes in labor conditions;
7. court order for imprisonment of the employee or other type of punishment, which excludes the possibility of performing work; or
8. any other grounds provided by an agreement between the employer and the employee.

The last point allows the parties to a labor contract to include provisions regulating termination in addition to those already contained in the Labor Code. This loophole cannot be over-abused, however, because Article 9 of the Labor Code provides that "the terms of employment agreements and contracts shall not reduce the status of hired workers in comparison to the requirements defined by the current Ukrainian labor legislation." Thus, for example, regardless of anything to the contrary stated in the labor contract, pregnant women and other specific categories of women may not be fired by an employer, except in cases of complete liquidation of the enterprise, institution or organization.

#### B. Unilateral (Hostile) Termination

In the more usual situations involving termination, the relationship between the parties has a tendency to become quite unpleasant rather quickly. Of course, the employer/owner will justifiably seek to unilaterally dismiss a disgruntled employee as quickly as possible. Under Ukrainian law, such unilateral termination is permissible, but only in the following cases:

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