



# EMPLOYMENT OF PERSONS WITH DISABILITIES

P R A C T I C A L   G U I D E   F O R   E M P L O Y E R S



# Employment of Persons with Disabilities

Practical Guide for Employers

Shortened version

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# INTRODUCTION

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One of the popular misconceptions, widely spread among employers, is that people with disabilities cannot be effective employees, arranging a workplace for them entails significant financial costs, and the laws on labour and taxation that are currently in effect do not get them motivated to employ those persons.

The creation of this Guide was preceded by a long discussion about how to change these stereotypes and demonstrate to businesses that people with disabilities work productively, creatively and appreciate their jobs. Not all of them require special working conditions, and the term «reasonable adjustment of the workplace» does not require significant financial spendings, being rather a search for optimal opportunities for the enterprise to organize the workplace or establish a flexible work mode or shorter working hours for the employees.

Wars in Ukraine, and prior restrictions connected with the COVID-19, changed the labour legislation to a degree. Teleworking and remote work, as well as some other innovations, made labour relations much more flexible and opened up new opportunities for employment of people with disabilities.

In this Guide, we tried to describe, in simple and understandable language, all the stages of employment relations that arise between an employer and a person with a disability during their employment. This is a kind of a step-by-step help for business, which provides answers to a number of questions: where to find such employees, how to conduct an interview with them, how to organize on-the-job training, how to formalise labour relations and how to terminate their employment.

We also tried to show the advantages offered by the national legislation to businesses that employ this category of employees, and, along the way, to tell about the responsibility for violation of those laws.

We live in a world of digital technologies and constant changes. This Guide will also be regularly updated and improved. Therefore, we decided to make it in digital form and place it on the special "RAZOM" ("Together") Platform of the Confederation of Employers of Ukraine. This will make it possible to keep it up to date by making changes and supplements. Also, on that Platform we placed a lot of other materials on employment of people with disabilities, best domestic practices, international experience, analytic materials and additional information that will be useful for employers, for government officials and, of course, for people with disabilities.

One more thing. Wars, earthquakes, accidents on transport and at work – all those reasons may cause anyone to become a person with a disability, at any moment of their life. Knowing that disability can affect all of us, we must create inclusive workplaces and organize the work process in a manner that provides everyone with equal opportunities for full participation. As employers and citizens, we must lead by example in creating inclusive work environments.

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President of the Confederation of Employers of Ukraine

Oleksii Miroshnychenko

# Chapter I

## GENERAL PROVISIONS

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### BASIC INFORMATION ON DISABILITY

For more than 32 years of Ukraine's independence, the number of people with disabilities has been rapidly growing every year, against the backdrop of a decrease in the population. This became especially noticeable in early 2014 and continues to this day due to the large-scale invasion by the Russian occupation army, which began on February 24, 2022.

According to the State Statistics Service of Ukraine, as of January 1, 2022, there were 2,725,826 people with disabilities in Ukraine (including 162,214 children with disabilities under the age of 18), or 6.6% of the Ukrainian population. The share of men with disabilities was 53%, and of women - 47%.

As of January 1, 2022, the total number of persons with disabilities of employable age was 2,563,612.

According to the Pension Fund of Ukraine, as of the last reporting date (July 1, 2023), the number of formally employed persons with disabilities amounted to 428,785.

The legislation currently in effect singles out three degrees of disability, which depend on the degree of persistent disorder of the body functions and possible limitation of life activities in interaction with the external environment due to loss of health, and are established by the Medical and Social Expert Commission (disability evaluation board):

- first –divided into subgroups A (persons with an exceptionally high degree of health loss) and B (persons with a high degree of health loss);
- second;
- third.

Apart from disability degrees, no less important for the employer are the types of health impairments that have caused the disability:

1. physical - disorders of the musculoskeletal system (for example, a spinal cord injury, multiple sclerosis, cerebral palsy, limb amputations); disorders of blood circulation, breathing, digestion; disorders that cause deformities, etc.;
2. mental - disorders of the functions of perception, attention, memory, thinking, speech, emotions, will;
3. intellectual - disorders of intellectual development;
4. sensory - impairment of vision, hearing, speech, smell, touch and other types of senses.

It is the listed disorders that determine the specific needs of people with disabilities and place respective obligations on employers, regarding the organisation of the work process and environment.

It is equally important to take into account the time when a person became disabled. Without going into details of an individual's character, the disability has a deeper meaning for people with a disability that occurred recently, because they need to accept their new selves, and learn to live in a new reality.

## LEGALLY STIPULATED REQUIREMENTS TO EMPLOYERS REGARDING THEIR OBLIGATION TO EMPLOY PEOPLE WITH DISABILITIES

The system of social protection of persons with disabilities in terms of the implementation of their rights to work is formalised in the Constitution of Ukraine and regulated by the provisions of the Code of Labour Laws of Ukraine, laws of Ukraine «On the basics of social protection of persons with disabilities in Ukraine», «On rehabilitation of persons with disabilities in Ukraine», « On labour protection» and other statutory instruments.

The basic law that forms the domestic policy on ensuring the employment of persons with disabilities and incorporates most of the international norms and recommendations in this area is the Law of Ukraine «On the Basics of Social Protection of Persons with Disabilities in Ukraine».

It stipulates the standard of workplaces reserved for employment of persons with disabilities, which must be observed by enterprises, institutions, organisations, and individuals who use hired labour (4% for employers with more than 25 employees, one workplace for employers with the number of employees of 8 to 25 people).

In case of failure to comply with the said provision, employers (except for institutions and establishments that are fully funded by the state or local budgets) must pay Annual Administrative and Economic Penalties to the Fund for Social Protection of Persons with Disabilities for each workplace reserved for employment of a person with a disability but not occupied by them (hereinafter referred to as "AEP").

## Employers' obligations regarding employment of persons with disabilities:

1. Independently calculate the number of jobs for the employment of persons with disabilities in accordance with the standard established by Part one of Article 19 of the Law of Ukraine «On the Basics of Social Protection of Persons with Disabilities in Ukraine».
2. Reserve and create workplaces for the employment of persons with disabilities, including special workplaces; create working conditions for such persons with account to the individual rehabilitation program (IRP); carry out adapting the main and additional equipment, as well as technical arrangements and adjustments for that purpose etc.; create proper working conditions in terms of health and safety, etc.
3. Submit to the State Employment Service the information necessary for the organisation of employment of persons with disabilities (according to reporting form № 3-PN), and on the demand for labour (vacancies).
4. Employ persons with disabilities in accordance with the legally established norm in the amount of four percent of the average number of full-time employees of the accounting staff for a year, and if there are 8 to 25 people working - in the amount of one workplace.
5. Follow the recommendations specified in the reference to the act of examination by the medical and social expert commission and in the individual rehabilitation program.
6. To organize training, retraining and employment in accordance with medical recommendations in cases stipulated by law.
7. Ensure compliance with labour rights and guarantees provided for persons with disabilities by legislation.
8. To bear responsibility in case of non-compliance with labour rights and guarantees provided for persons with disabilities by legislation.
9. Independently calculate and pay AEP, the amount of which is determined in the amount of the average annual salary for each workplace, reserved for employment of a person with a disability, within the framework of the standard defined by the legislation, and not occupied by a person with a disability.

## Rights of employers regarding employment and job placement of persons with disabilities:

1. Independently search for personnel with disabilities.
2. Apply to the State Employment Service for the selection of personnel with disabilities.
3. Apply to the State Employment Service for advice on employment of persons with disabilities.
4. Apply to state institutions for financial assistance, loans, compensations and subsidies for employment of persons with disabilities.
5. Independently calculate and pay the AEP payable in connection with the failure to observe the quota of workplaces reserved for employment of persons with disabilities for the previous year, calculated in accordance with Article 20 of the Law of Ukraine "On the Basics of Social Security of Persons with Disabilities in Ukraine".
6. Appeal to the Fund for Social Protection of Persons with Disabilities or resort to court proceedings in connection with disputes arising from legal relations under Articles 19 and 20 of the Law of Ukraine "On the Basics of Social Protection of Persons with Disabilities in Ukraine".
7. Pay a lower-rate single social contribution.
8. Use tax benefits, if permission has been granted (only for enterprises founded and owned by public associations of persons with disabilities).
9. Use preferences in public procurement (only for enterprises of public associations of persons with disabilities).
10. Use alternative options to meet the quotas for workplaces to employ persons with disabilities.



## EMPLOYERS' RESPONSIBILITY FOR FAILURE TO MEET WORKPLACE QUOTAS FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES

By March 10 every year, in an automated mode with the use of data from the State Register of Mandatory State Social Insurance and the Centralized Data Bank for Disability Problems, the Fund for the Social Protection of Persons with Disabilities identifies employers that have not met the workplace quotas during the previous year, and sends them a calculation of the AEP amounts payable in connection with their failure to meet the workplace quota for employment of persons with disabilities in the previous year. The calculation is sent in the form of an electronic document through the employer's electronic accounts on the web portal of electronic services of the Pension Fund of Ukraine.

The observance of the 4% workplace quota for the employment of persons with disabilities by enterprises, institutions and organisations, including enterprises, organisations of public associations of persons with disabilities, private individuals who use hired labour, is determined in an automated mode on the basis of data provided by the employer to the State Register of mandatory state social insurance in the Tax calculation of the amounts of income accrued (paid) to taxpayers who are private individuals and the amounts of tax withheld from them, as well as the amounts of the single contribution accrued.

The employers with the average registered number of employees with disabilities that is lower than the standard stipulated by Article 19 of the Law of Ukraine "On the Basics of Social Security of Persons with Disabilities", shall pay the AEP in the amount of:

- half of the average annual salary of a full-time employee (for employers with 8 to 25 employees);
- the average annual salary of a full-time employee for each workplace reserved for employment of a person with a disability and not occupied by a person with a disability (for employers with 16 to 25 employees);
- the average annual salary of a full-time employee for each workplace reserved for employment of a person with a disability and not occupied by a person with a disability (for employers with 26 employees or more).

Failure to observe the time frames for payment of the amount of administrative and economic penalties entails the charging of a fine in the amount of 120% of the annual accounting rate of the National Bank for each calendar day of the delay.

The AEP payments are made to branches of the Social Protection Fund for Persons with Disabilities at the location of the state registration of employers as legal entities or individual entrepreneurs, to accounts opened with the State Treasury by April 15 of the year following the year in which the non-observance of the quota for employment of persons with disability took place.

## Registration and reporting

The employer is obliged to inform the employment center in his place from the day he needs to recruit employees with disabilities and/or from the date of opening of vacancies, about which it is possible to employ people with disabilities.

The information necessary for the organisation of employment of persons with disabilities can be provided by the employer to the employment centre either electronically (with or without the imposition of an electronic signature or seal based on qualified public key certificates) or on hardcopy (certified by the signature of the senior officer / individual entrepreneur or a person authorized by them). Primary information is provided by the employer for the purpose of informing about the need for employment of persons with disabilities.

The State Labour Service of Ukraine (hereinafter referred to as "the SLS") checks employers' compliance with the regulations regarding the employment of persons with disabilities in accordance with the Procedure for control over the observance of the quota of workplaces, and inspects enterprises, institutions, organisations, including enterprises, organisations of public associations of persons with disabilities, and individuals who use hired labour, for the observance of the quota of workplaces reserved for employment of persons with disabilities, in particular through its consideration.

In accordance with this Procedure, the SLS may carry out unscheduled inspections of employers' observance of the quota of workplaces reserved for employment of persons with disabilities, either based on the information provided by the territorial branch of the Fund for Social Protection of Persons with Disabilities that it received from the Pension Fund of Ukraine, or upon assignment of the Prime Minister of Ukraine regarding the inspection of a business entity in connection with the detected persistent violations of the legislation on the creation of workplaces for persons with disabilities, on employment and job placement of persons with disabilities.

## Reasonable accommodation and universal design

- Reasonable accommodation is the introduction, when doing so is required in a specific case, of necessary and suitable modifications and adjustments that do not constitute a disproportionate or unjustified burden, for the purposes of ensuring the realisation or exercise of all human rights and fundamental freedoms by persons with disabilities equally with other persons;
- Universal design is the design of objects, environments, programmes and services designed to make them as usable as possible for all people without the need for adaptation or special design. Universal design does not exclude assistive devices for specific groups of persons with disabilities where necessary.

A part of the obligation to ensure reasonable accommodation of the workplace is ensuring the accessibility workplaces, therefore, public and private sector employers need to create the necessary conditions in order to have a clear, accessible and timely procedure to meet with the needs of reasonable accommodation of workplaces. Where an individual or an employer has identified obstacles that prevent the full inclusion of a person with a disability, the following steps must be taken:

- the respective employer cooperates with the specific individual to identify obstacles and agree on potential solutions to eliminate or avoid those (reasonable accommodation of the workplace), with account to the MSEC recommendations indicated in the IRP and the solution preferred by that specific person with a disability;
- the employer implements the solution preferred by the person with a disability (in particular, the measures indicated in their IRP).

Ensuring accessibility through universal design means that workplaces are accessible to people with disabilities.

This includes physical accessibility to buildings as well as access to technologies that enable people with disabilities to access the workplace. A reasonable accommodation is an individual adaptation that may be required for people with disabilities to use their skills and talents to their full potential.

## State assistance to business entities

To ensure the employment of persons with disabilities, a number of mechanisms have been defined at the legislative level to provide economic entities, with the state support in the form of various financial assistance, benefits, subsidies, compensations, and loans, both to those who have already employed persons of the specified category and to those who intend to do so.

Each type of support is described in more detail below.

**Subsidy for the creation of special workplaces for the employment of persons with disabilities**, registered with the state employment service as unemployed.

The condition for granting this subsidy is non-termination of the employment contract at the employer's initiative within two years from the date of employment of a person with a disability in connection with changes in the facility management and organisation of work, in particular, through the reorganisation or repurposing of an enterprise, institution or organisation, personnel reduction, or by agreement between the parties.

The provision of the subsidy is based on an agreement between the employer, the territorial branch of the Fund for Social Protection of Persons with Disabilities and the basic employment centre or a branch of the regional employment centre.

Its maximum size is set as:

- a) 40 minimum wages, if the workplace is created by way of adaptation of the main and additional plant and machinery and technical equipment at the current workplace or at the existing part of the production venue. Since the minimum wage in 2023 is set at UAH 6,700 per month, the subsidy may not exceed UAH 268,000;
- b) 100 times the minimum wage size, or a maximum of UAH 670,000, if the workplace is created by installing the main and additional plant and machinery and technical equipment due to the impossibility of adapting the current workplace or the existing production venue, or the absence of places and areas.

#### **Targeted loan for the creation of jobs reserved for employment of persons with disabilities.**

A targeted loan is interest-free and is provided on the basis of an agreement between the Social Protection Fund for Persons with Disabilities and the employer with a repayment term of up to three years from the date of receipt of funds to the employer's account opened with the State Treasury Service.

A workplace for a person with a disability is regarded as created if a person with a disability is employed there, with an employment contract made with that person, in accordance with the procedure stipulated by law.

#### **Financial assistance for the creation of special workplaces for employment of persons with disabilities.**

The need to create a special workplace or part of the production area for a person with a disability and the requirements for them are established by an individual rehabilitation program.

The amounts of returnable and non-returnable financial aid and targeted loans is determined by the branch of the Social Protection Fund for Persons with Disabilities on the basis of technical and economic assessments and estimates, provided by the employer.

The respective workplaces for the employment of persons with disabilities cannot be reduced within three years from the date when the terms and conditions of the agreement on the provision of financial assistance or a targeted loan have been met.

Besides, enterprises, institutions and organisations, individual entrepreneurs, including those who have selected a simplified taxation system, in case they employ persons with disabilities, have the right to apply a [single contribution to the mandatory state social insurance](#) in the

amount of 8.41% the defined basis for calculation of the single contribution for working persons with disabilities.

At the same time, the generally applicable size of the single contribution is 22% of the determined basis for calculation of the single contribution. That is, while an employer, for example, pays a single contribution of UAH 3,000 for an employee without a disability, for an employee with a disability, under other conditions being equal, it must pay UAH 1,146.82.

Also, for employers that are willing to offer employment at the new workplace, for a period of at least two years, to registered unemployed persons referred by an employment centre, in particular to persons with disabilities who have not reached the retirement age, support is provided, as stipulated at the legislative level, in the form of [reimbursement of actual expenses](#) in the amount of a single contribution to mandatory state social insurance for the respective person for the month for which it was paid, not to exceed two times the minimum insurance contribution.

Any employer that, upon referral of the employment centre, offers at least one-year employment to persons with disabilities possessing the status of a registered unemployed person for more than one month, shall be compensated for 50% of the actual costs of labour compensation, not to exceed the amount of the minimum wage established by the legislation at the time of payment.

The total duration of the compensation period is six months.

Also, a possibility is envisaged for small business entities, that who employ registered unemployed persons with disabilities at newly created workplaces by an employment contract for a period of at least two years, to obtain **compensation for actual costs in the amount of a single contribution to the mandatory state social insurance** for the respective person, for the month for which it was paid.

Finally, employers willing to employ internally displaced persons (hereinafter referred to as "IDPs"), including those with disabilities, recognized as unemployed in accordance with the established procedure, can rely on the following [compensations](#): : the employer's labour compensation costs for employment by fixed-term employment contracts of registered unemployed IDPs by fixed-term employment contracts effective for no more than six calendar months, on condition that the employment guarantees of such a person are maintained for a period that exceeds two times the duration of the payment.

## AUTHORIZED BODIES OF STATE POWER AND INSTITUTIONS (ORGANISATIONS) FOR THE FORMATION AND IMPLEMENTATION OF THE STATE POLICY IN THE AREA OF EMPLOYMENT OF PERSONS WITH DISABILITIES

The [Ministry of Social Policy of Ukraine](#) is the central body of the executive power that ensures the formation and implementation of state policy in the area of social policy, including in relation to employment and job placement of persons with disabilities.

The [Ministry of Economy of Ukraine](#) is the central body of the executive power that ensures the formation and implementation of the state policy in the area of labour, population employment, labour migration, labour relations, implementation of the state supervision and control over compliance with the requirements of legislation on labour and population employment, in particular.

The [Antimonopoly Committee of Ukraine](#), which, according to the Law of Ukraine "On state assistance to business entities", is an authorized body whose powers encompass: receiving and considering notifications about new state assistance from providers of such assistance; determining whether measures to support economic entities at the expense of the state or local resources qualify as state assistance; assessing admissibility of state assistance for competition, decision-making.

## BENEFITS AND INCENTIVES FOR EMPLOYERS WHO EMPLOY PEOPLE WITH DISABILITIES

Hiring and employment of people with disabilities may contribute to the creation of a more diverse and inclusive work environment, which may ultimately result in the solution of a greater number of issues and to more innovation at workplaces.

Besides, employment of people with disabilities has many advantages, for example:

- employment of persons with disabilities contributes to improving the employer's reputation among employees, customers and the society in general;
- increasing the level of innovativeness of workplace organization
- reduction of the amount of the single social contribution for enterprises, institutions and organizations, individual entrepreneurs in which persons with disabilities work (8.41% of the base of calculation of the single contribution instead of 22%)
- securing employers from the obligation to pay administrative and economic sanctions for non-fulfillment of workplace standards for the employment of such persons, from the need to spend on hiring and training new personnel, and also ensures that such employers receive commercial and other benefits from the direct performance of their duties by employees with disabilities.

# Chapter II

# SELECTION OF EMPLOYEES WITH DISABILITIES

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## FINDING APPLICANTS

In practice, there are two ways to find applicants with disabilities for a vacancy: when a person themselves applies for employment assistance and when that a person must be found.

While the former method does not require any effort on part of the employer, the latter one requires that certain actions are taken, each of which must take into account the aspect of disability, namely:

### 1. Job description.

In addition to disclosing the content of the proposed position, work duties and conditions, etc., it must contain information about the potential opportunities and advantages of this job for a person with a disability.

### 2. Communication of information about vacancies.

In addition to the usual resources that carry information about vacancies, such as: staff, the company website, information resources for job search: [Work.ua](https://www.work.ua/) (<https://www.work.ua/>), [GRC.UA](https://grc.ua/) (<https://grc.ua/>), [Robota.ua](https://rabota.ua/ua) (<https://rabota.ua/ua>), social networks, partners, etc..

### 3. Feedback

It is necessary to make sure that people with disabilities who apply for vacancies have access to various methods of feedback, with account to their needs, caused by any specific disorder.

## RECRUITMENT INTERVIEWS AND TESTING

In order to make the complete picture of applicants, in particular those who have a disability, and to determine how suitable they are for the vacancy, measures such as an interview or testing may be applied.

Based on their results, it is possible to find information on both the person's professional capabilities, and also on their specific needs caused by their disability, for further organisation of the work process and environment.

In order to find out the respective needs, the **questions of the Washington Group** may be suitable.

In case of an interview/ testing with a person with a disability, accessibility conditions must be ensured, if the applicant needs them, to provide, among other things, the following:

- the possibility to conduct relevant events offline or online (by telephone or by written communication via e-mail or messengers, etc.);
- the presence of physical accessibility conditions in the interview/testing premises.
- An approximate list of advice on communication and meeting accessibility conditions at work for people with disabilities caused by the most common types of disorders, depending on their specific characteristics:

### 1. For persons with musculoskeletal disorders:

- communication at eye level (if possible);
- organisation of the workplace to ensure the most comfortable positions to avoid the feeling of discomfort in the body or restriction of free movement;
- ensuring availability of objects and information (location at a convenient height, in a convenient place, etc.) that the employee with a disability may need to perform their work duties;
- minimizing the need to move around the room, especially if it is architecturally inaccessible or partially accessible.

## 2. For persons with intellectual and certain grave mental disorders:

- communication in simple language, in short sentences and with the use of words that are as clear as possible; repeating or summarizing what was said, allowing more time to think;
- if possible - providing information in various formats (audio, visual, etc.);
- trying to formulate questions starting with "who", "what" and "where" instead of "when", "why" and "how";
- provision of training in performance of labour duties;
- ensuring comfortable working conditions (covering of the work room walls in calm colours, arrangement of furniture, etc.); minimisation of visual and sound signals in the room.

## 3. For persons with visual impairments:

- clear, concise and understandable delivery of the necessary information;
- commenting on actions and the situation around;
- limitation of physical contact by what is only necessary for work;
- minimizing the need to move around the room, especially if it is architecturally inaccessible or partially accessible. If a particular route is used frequently, it is necessary to ensure that it is safe and convenient.

## 4. For persons with hearing impairment:

- communicating with a person in a clear, understandable language, without haste and in a manner that is the most convenient for them (sign language, communication in writing (using paper or an electronic device, etc.);
- mandatory writing of information that contains numbers, special terminology, addresses, etc., so that it is clearly understandable;
- engaging a mentor with perfect command of sign language in the course of mentoring/ training/ supervisory support.

## Chapter III

# ORGANISATION OF WORK OF PEOPLE WITH DISABILITIES

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## CONCLUSION OF EMPLOYMENT CONTRACTS

### In what cases it is prohibited to make an employment contract

It is prohibited to enter into an employment contract with a citizen who, according to a medical opinion, is contraindicated for work due to their health condition (Part 6 of Article 24 of the Labour Code).

Therefore, when hiring a person with a disability, the latter must submit, in addition to general documents, the following:

- a reference note to the MSEC examination report, which confirms the disability and contains a conclusion on the conditions and nature of work, in the form approved by the MoH order of July 30, 2012, № 577 (as amended).
- IRP, in the form and according to guidelines for filling it as approved by MoH Order of October 8, 2007 № 623.

### When it is possible to deny employment to a person with a disability

According to Part 3 in Article 17 of the Law of Ukraine "On the Basics of Social Protection of Persons with Disabilities in Ukraine", an employment contract may not be denied for the reasons of disability.

An employee with a disability may be denied employment in the following cases:

if their professional qualities do not meet the position requirements;

when, according to the MSEC conclusion, specified in the reference note to the examination report of the MSEC and/or IRP, the employee's health condition prevents the performance of their professional duties, threatens other persons' health and safety at work, or the continuation of work or a change in its nature and scope threatens to worsen the health of that person with a disability.

The employer has the right to deny employment to an employee with a disability if they are found to be unsuitable for the position held or the work performed for reasons of their health condition, if, in the course of the hiring process, it is established that during the interview that person concealed the fact that the MSEC conclusion, specified in the reference note to the report of the examination by the MSEC and/or the IRP, stated that the person is incapable of work or has limitations as to their ability to do certain types of work.

## Individual rehabilitation program for a person with a disability

An individual rehabilitation program for a person with a disability (IRP) is a set of rehabilitation measures of optimal types, forms, scopes and time frames, along with a definition of the manner and place of their implementation, aimed at restoring and compensating for impaired or lost body functions and abilities of a person with a disability and a child with a disability.

The IRP is developed in accordance with the State Standard Program for the Rehabilitation of Persons with Disabilities by the Medical and Social Expert Commission (MSEC), with the mandatory participation of a person with a disability, and must be approved by the person with a disability.

The IRP is prepared based on the information from the MSEC examination report, by the template approved by the MoH Order of October 8, 2007, № 623. The Provisions on the IRP was approved by the CMU Resolution dated May 23, 2007, № 757.

A person with a disability has the right to refuse any type, form and scope of rehabilitation measures envisaged in their IRP, or the entire program as a whole.

The legislation does not obligate employers to demand an IRP from a person with a disability. At the same time, according to the Laws of Ukraine "On the Basics of Social Protection of Persons with Disabilities in Ukraine" and "On the Rehabilitation of Persons with Disabilities in Ukraine", an IRP is mandatory for employers to implement, if a person with a disability presented it in the hiring process or later, in the course of their work.

## The list of documents required to make an employment contract:

- a job application;
- passport or other identity document;
- employment record book (only persons who find their first employment may be hired without an employment book);
- a document on education (specialisation, qualification);
- a copy of the identification number assignment certificate;
- a copy of the pension certificate;
- a copy of the reference note to the MSEC examination report in form № 157-1/o (those documents indicate the cause of disability, the disability degree group, the duration of the disability and the conclusions of the commission on the conditions and nature of the work by the person with a disability);
- individual rehabilitation program for the person with a disability, issued by the MSEC.

Therefore, upon hiring, an employment contract is made in writing, or an employment order is issued; the employee is presented with it to read and understand, and a notification is submitted to the territorial body of the State Tax Service of Ukraine.

## PROBATION PERIOD

Upon hiring, a probation period may be set for employees with disabilities, with the exception of persons with disabilities who were referred to a job by the medical and social examination commission (MSEC) (Part 3, Article 26 of the Labour Code of Ukraine).

However, it is necessary to remember that if an employment contract is made during the effect of the martial law, the probation condition for employees at the time of hiring can be established for any category of employees (clause 2 of Article 2 of the Law of Ukraine dated March 15, 2022 № 2136-IX "On the organisation of labour relations under martial law").

**The probation period for the employee is set at the time of hiring, but it may not be a condition for concluding an employment contract.**

The condition regarding the establishment of a probation period upon employment must be recorded in the employee's application, in the employment contract, and also in the employment order. The absence of a respective condition in the specified documents serves as a reason to believe that the employee was hired without a probation.

If the employee continues to work after the probation period has expired, they are considered to have passed the probation, and any subsequent termination of the employment contract is only permitted for generally applicable reasons (Article 28 of the Labour Code of Ukraine).

## INTERNSHIP

**Internship is a type of advanced training aimed at development of practical skills and abilities to perform professional duties in a profession or position, to which a graduate of an educational institution or a registered unemployed person can apply.**

Internship can be established for employees with disabilities who have gained professional education and need practical work experience (expansion of competence) in their profession (specialisation), or for those who have not worked for a long time and wish to restore or improve their knowledge, skills and abilities in practical activities, or for those who have not yet completed their education process.

At enterprises of any form of ownership, there are only **2 types of internships**:

- **internship for people in education** (in accordance with the Law of Ukraine dated September 5, 2017 № 2145-VIII "On Education");
- **internship for registered unemployed persons** (in accordance with Order № 318/655 dated May 31, 2013, "On approval of the procedure for professional training, retraining and advanced training of registered unemployed persons", registered with the Ministry of Justice of Ukraine, dated June 19, 2013, № 1029/23561).

### Internship for people in education.

In accordance with the provisions of Article 29 of the Law of Ukraine, dated July 5, 2012, № 5067-VI "On Employment of the Population", internships are provided for young people. Also, the CMU Resolution, dated January 16, 2013, № 20 approved the procedure to make an internship agreement with students in professional (vocational technical), professional pre-higher, and higher education at the employer's facilities, and the Standard form of an internship agreement for applicants of p students in professional (vocational technical), professional pre-higher, and higher education at the employer's facilities.

## Internship of persons registered as unemployed with an employment centre.

Internship of persons with disabilities who are registered unemployed may be carried out as follows directly at the facilities of the employer as the customer for human resources; in targeted courses.

## WORKING CONDITIONS

The working conditions of a person with a disability must be defined with account to the individual capabilities and needs of such an employee.

The type of work that a person with a disability is suitable for can be determined by the type of impairment they have: mental, physical, sensory, psychiatric, or a combination of those. However, when it comes to performance of their duties at work, those are less important than the knowledge, skills and general abilities of such a person.

General features that must be taken into account when employing a person with a disability:

1. Individual regimen of drug therapy.
2. Individual diet.
3. The need for an individual pace of work.
4. Motion limitations.
5. The possibility to use special aids and devices that partially compensate for functional limitations or improve working conditions (air conditioner, orthopaedic chair, brighter lighting, magnifying glass, anti-noise earplugs, headphones, helmets, Braille keyboard, sign language translation, etc.).

## WORKPLACE ACCOMODATION (ORGANISATION). ACCESSIBLE WORKPLACE

Workplaces for persons with disabilities are divided into two types:

- **Ordinary** (if necessary, with the use of certain measures not related to their equipment and arrangement), if, according to working conditions and with account to the capabilities of persons with disabilities, they can be used for their employment ;

- **Special** - separate workplaces or sections of the production area, which require additional measures to organize the work of persons with account to their individual functional capabilities in connection with their disability, by way of adapting the main and extra equipment, technical means, etc..

A special workplace may be a newly created (i.e. organized) one, or working conditions at an existing workplace may be adapted to permit employment of a person with a disability. The need to create special conditions may arise in various circumstances: for example, when new employees are hired or when employees who worked there earlier return to work after they suffered an industrial injury, causing disability.

The majority of workers with disabilities, under the condition of rational selection of work and definition of work functions, do not need significant adaptations of the workplace, or any adaptation at all.

## MENTORING/ ONBOARDING OF THE EMPLOYEE, SUPPORT IN THE TEAM

A large number of people with disabilities face a range of problems at the workplace. For example, people with musculoskeletal disorders can often run into architectural barriers when moving, or when they exert physical efforts as part of their job. People with hearing and/or speech impairments have difficulties communicating in the workplace with co-workers, employers and customers. People with visual impairments have a limited ability to navigate in space, as well as limitations in performing certain types of work. People with intellectual disabilities need help at the workplace in mastering work tasks, planning time, following rules and regulations, establishing communication and relationships with employees, improving self-care skills, etc..

Therefore, important measures taken by the company to better adapt the employee to work are:

- mentoring/ training of an employee with a disability at work (hereinafter referred to as "mentoring");
- supervisory support for an employee with a disability in the team (hereinafter referred to as "supervisory support").

**Mentoring** envisages training directly at the workplace by way of sharing the experience and knowledge that more experienced workers have, to a person who needs professional training and the formation of the necessary skills.

Mentoring can take the following forms: individual (one employee is assigned to the mentor); group (mentor manages a group of employees); group-individual (the work team provides mentoring for one employee); collective-group mentoring (the work team provides

mentoring for a group of employees). At the same time, it is important to note that there are no legal restrictions on the mentor based on their position, education or other characteristics. What matters is their experience and professionalism.

Guidelines for the organisation of mentoring are defined in the Order of the Ministry of Social Policy of Ukraine, dated October 11, 2017, № 1611.

Regarding **support** as a way to ensure effective employment, successful onboarding and adaptation of an employee with a disability in a new workplace, it can be provided by:

- the employer;
- a specialized career counsellor (employee of the employment centre) through individual support after employment of a person with a disability who had the unemployed status;
- within the framework of receiving by the employee as a person with a disability of the social support services in the course of their hiring and at the workplace.

Basic provisions on support mechanisms through employment centres and within the social service of social support in the course of hiring and at the workplace are defined by the legislation.

At the same time, two important aspects should be kept in mind in this context:

1. Information about disability is confidential and may only be shared with the employee's consent.
2. If the disability does or may affect the work of colleagues, for example, if a person has occasional epileptic seizures or takes regular injections, takes prescribed medication and therefore needs longer or breaks or takes them more frequently, it is important that other employees are informed about these aspects.

Therefore, experience shows that employees with disabilities have different needs for support in the workplace. Some may need support for many months, while others need support only to start their work.

## Safety at work for employees with disabilities

The legislation does not prohibit employees with disabilities from working in jobs with difficult and harmful working conditions, unless such work is contraindicated for them according to the MSEC conclusion.

Attestation of workplaces of employees with disabilities for working conditions is carried out on a generally applicable basis.

According to Article 12 of the Law of Ukraine "On Safety at Work", employers shall be obligated to create working conditions for employees with disabilities, with account to the recommendations of the medical and social expert commission and their individual rehabilitation program (if the employee with a disability has provided it to the employer). The employer must offer the employee a position or job that, according to the conditions and nature of the work, is consistent with the MSEC conclusion, as well as the employee's profession and qualifications.

The employer has the right to address the MSEC that passed a decision to assign a disability degree group to the employee, requesting to provide an opinion on whether or not the actual working conditions of that employee are suitable for their health condition. Such a request is extremely important in a situation where the working conditions are not specified in the reference note to the certificate of examination of the MSEC and/or IRP.

If the reference note to the certificate of examination of MSEC and/or IRP indicates certain restrictions regarding the conditions and nature of work, the employer shall be obligated to offer the employee a different vacant position or an easier job.

If the employee is unable to perform their previous work, the employer shall be obligated to organize training or retraining of a person with a disability, and their placement in a different job, in accordance with the MSEC recommendations.

Please note that it is possible to engage employees with disabilities in overtime and night-time work, but it is necessary to secure their consent, preferably in writing, in order to avoid later issues with the SLS, and such work may not contradict the MSEC recommendations.

Employees with disabilities are entitled to all the benefits and compensations stipulated by the legislation on safety at work.

## LABOUR COMPENSATION

### Tax benefits

Employees with disabilities are entitled to a social benefit in taxation, provided as the total monthly taxable income with the deduction of the amount of the tax social benefit.

### Salary calculations for employees with disabilities have some specific features

Provisions of the Tax Code of Ukraine (TC) do not envisage any separate income tax benefits for persons with disabilities. Therefore, personal income tax at the rate of 18% and the military levy of 1.5% are withheld from the salary of an employee who is a person with a disability on generally applicable grounds (clause 167.1, clause 16-1 in subchapter 10, Chapter XX of the TC).

At the same time, those employees are entitled to a general tax social benefit (TSB). In accordance with sub-clause 169.1.3 of the TC, payers of personal income tax who are persons in the I or II disability groups, including from childhood, can use the TSB in the amount of 150%.

TSB in the amount of 200% is granted to taxpayers who are persons in the I or II disability groups and ex-combatants, subject to the Law of Ukraine "On the Status of War Veterans and Guarantees of Their Social Protection", dated October 22, 1993, № 3551-XII.

In 2023, the TSB is UAH 1,342.50 with the threshold income of UAH 3,760. In order to use that reduction, the employee must submit an application to the employer to receive a tax social benefit in accordance with subclause 169.1.1 of the TC.

But the SIC on the salary of an employee with a disability is calculated by a lower rate - 8.41% (Part 13, Article 8 of the Law of Ukraine "On the Collection and Accounting of a Single Contribution to Mandatory State Social Insurance", dated July 8, 2010, № 2464-VI).

The basis for the application of that SIC rate is a certified copy of the certificate from the report on examination at the medical and social expert commission on establishing the disability group (item 5, part 2 of section III of the Guidelines on the procedure to calculate and pay a single contribution to the mandatory state social insurance, approved by MoF Order, dated April, 20, 2015 № 449).

Such salary taxation rules apply to persons with disabilities of any disability group.

## GUARANTEES FOR EMPLOYEES WITH DISABILITIES

Employees who lost their work capability due to an accident at work or an occupational disease shall retain their place of work (position) and the average salary for the entire period until their ability to work have been fully restored.

If an employee is unable to perform their previous work functions, their employer shall be obligated to organize training, retraining and job placement of that person with a disability, in accordance with the MSEC recommendations.

At the request of an employee with a disability or according to the requirements of their individual rehabilitation program, they may be granted a working day (working week) with shorter hours, and preferential working conditions (Article 172 of the Labour Code of Ukraine).

## Benefits (or preferences) for employees with disabilities

The legislation of Ukraine envisages a system of benefits for working persons with disabilities.

In particular, they have the following rights:

1. Shorter hours for a work day or week;
2. Preferential working conditions;
3. Longer duration of the main and additional vacations;
4. Tax benefits, etc.

Also, the legislation stipulates a restriction on engaging employees with disabilities in work at night time and in overtime work without their consent, and if it contradicts the MSEC recommendations.

In those cases, labour compensation is paid in proportion to the actual time worked, or depending on the output.

## Vacations

Employees with disabilities, who have worked for less than 6 months after being hired, may use their right to take a full-time annual paid vacation even before the expiry of the six-month period of continuous employment with the respective employer (clause 2, part seven of Article 10 of the Law "On Vacations").

In the second and the following years of being employed at the enterprise, employees with disabilities have the right to take annual leave at their own discretion and at a time that is convenient for them (Part 13 of Article 10 of the Law of Ukraine "On Vacations").

**The duration of annual basic leave for employees with disabilities is as follows:**

**for persons with disabilities in groups I and II - 30 calendar days;**

**for persons with disabilities in group III - 26 calendar days (part seven of Article 6 of the Law of Ukraine "On Vacations").**

Unpaid leave of up to 30 calendar days per year is granted to employees with disabilities in group III, and up to 60 calendar days per year to employees with disabilities in groups I and II (clauses 6, 7 in part one of Article 25 of the Law of Ukraine "On Vacations").

If the collective agreement establishes additional vacations, or an employee with a disability has the right to additional vacations on other grounds, then the number of days of the additional vacation is added to the basic annual vacation.

Persons with disabilities caused by the war, whose status is defined by the Law of Ukraine "On the Status of War Veterans and Guarantees of Their Social Protection", are granted an additional paid leave for up to 14 calendar days per year (Article 16-2 of the Law of Ukraine "On Vacations").

In addition, similarly to all other employees, employees with disabilities may claim unpaid leave by agreement of the parties for a maximum of 15 days per year.

## Transfer

Employees who, due to their health condition, are entitled to being engaged in lighter work, upon their consent, must be transferred by the owner or the body authorized by it, to a respective job, in accordance with a medical opinion, temporarily or indefinitely.

Upon transfer due to the health conditions to a lighter, lower-paid job, the previous average earnings are preserved for the employee for two weeks, starting on the day of the transfer, and in cases envisaged in the legislation of Ukraine, the previous average earnings are preserved for the entire duration of performing the lower-paid work, or material support is provided under the generally applicable social insurance (Article 170 of the Labour Code of Ukraine).

## TERMINATION OF EMPLOYMENT RELATIONS

Employees whose disability was caused by an injury at work or an occupational disease at an enterprise (Article 42 of the Labour Code of Ukraine) have a priority right to stay employed at that enterprise, if the enterprise undergoes personnel reductions due to changes in organisation of production and labour.

The employer may terminate the employment contract on its own initiative on the grounds of disability only if, according to the MSEC conclusion, the health condition of an employee with a disability prevents them from the performance of professional duties, threatens the health and work safety of other persons, or the continuation of work or a change in its nature and scope threatens to worsen the health of the person with a disability (Article 17 of the Law of Ukraine "On the Basics of Social Protection of Persons with Disabilities in Ukraine").

**The employer has the right to dismiss an employee with a disability in accordance with Article 7 and part six of Article 24 of the Labour Code of Ukraine, if, after an employment contract has been made, contraindications to the work performed are found (for example, the employee concealed that fact when applying for a job).**

If, according to the MSEC conclusion, the work that the employee performed before their disability, is contraindicated for them for health reasons, then the employee with a disability must be offered a transfer to a different position, which their health condition permits. If the employee declines the transfer or if it is impossible to find another workplace (due to contraindications to work), the employment contract must be terminated on the basis of Clause 2 of Article 40 of the Labour Code of Ukraine.

Also, the owner or the body authorized by it may terminate the employment contract in the event that the employee is found to be unfit for the position occupied, or the work they perform, due to their insufficient qualifications or health condition that prevents the continuation of that work, as well as in the case of refusal to grant access to state secrets or withdrawal of access to state secrets, if the performance of the duties assigned to them requires access to state secrets.

The employer has the right to dismiss an employee with a disability during the probation period in the event that the employee is found to be unfit for the position they were hired to, or for the work they perform, by a three days' written notice (Article 28 of the Labour Code of Ukraine).

An employee with a disability may terminate a fixed-term employment contract on their own initiative if their health condition prevents them from performing their work duties (Articles 38-39 of the Labour Code of Ukraine).



