

## Modern trends in labor law: a comparative analysis of the EU and Ukraine

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### Abstract

The norms of labor law that regulate the relevant relationship between the employee and the employer are constantly evolving under the influence of various factors, including society and the State. Labor law trends have become especially prominent over the past several years, particularly during the COVID-19 pandemic. Lockdown restrictions have dealt a serious blow to the labor field and have required urgent action from both companies and governments. In view of this, a number of relevant subtopics have been formed in labor relations, the study of which is of interest to the entire scientific community. The purpose of the research paper is to study the main trends that have emerged in modern labor law and their impact on the formation of the labor legislation system in Ukraine and the European Union (EU) from a comparative perspective. The article analyzes the main directions that the authors have identified as especially relevant in the development of labor relations and the legal regulation of such issues. Considering that some trends have arisen spontaneously under the influence of the COVID-19 pandemic, and many States were not ready for them, we have analyzed how the legislator settled such issues. The laws of Ukraine, the EU, and individual EU member States are examined here in a comparative perspective to draw upon and understand a complete picture of the modern development of labor relations in Europe and to identify the most beneficial approaches to regulating topical issues of labor law. The information obtained as a result of the study can be used to improve Ukraine's national legislation, bring it in line with European standards, further study the issue of the modern development of labor relations, and teach and develop methodological support for educational disciplines related to labor law and social security law.

**Keywords:** labor law, pandemic, COVID-19, remote work, non-discrimination, EU law

### INTRODUCTION

Any branch of law is constantly evolving, changing, and adapting in accordance with new societal requirements. Throughout the history of humankind, the process of the cognition of law is continuous since law is constantly developing, which in turn requires an update of ideas about the State and legal reality and, consequently, an update of legal norms.<sup>1</sup> This also applies to labor law because its norms must also change to meet challenges in the field of employment and protect labor rights that arise. Modern labor relations are undergoing a period of transformation and are adjusting to new realities driven by scientific progress, the introduction of new technologies, and

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<sup>1</sup> Ye.V. Bilozorov, V.P. Vlasenko, and O.B. Horova, *Theory of State and Law* (Kyiv: National Academy of Internal Affairs, Osvita Ukrainy, 2017). (Ukrainian language).

globalization.<sup>2</sup> Because of this, new issues are surfacing and recurring in the field of labor law—“trends” that require the improvement of legal norms or even a search for new approaches to solve the problems that have arisen.

The current trends that are noteworthy in the field of labor relations can be divided into two categories: 1) those whose formation periods were lengthy and had a logical conclusion to the processes related to human rights (gender equality, inclusivity, etc.); and 2) those that arose suddenly and are associated with drastic changes in the way of life caused by the COVID-19 pandemic (quarantine, remote work, etc.). If the first type of trend was expected, and States gradually introduced the relevant norms, then the second type was completely unexpected, and States required urgent, volitional legislative measures. The first trend category is also associated with the development of the field of labor relations. Human-centrism, which is present in all branches of modern relationships, continues to leave its mark on labor law. Equality, non-discrimination, technological progress, and inclusivity have affected labor relations.

The second trend category is international in scope and has affected almost all people in different countries regardless of gender, profession, social status, etc. This industrial trend is associated with the widespread introduction of lockdown restrictions due to the COVID-19 pandemic. Because of the long lockdown, such concepts as remote work, unpaid leave, payment to employees who are in isolation, restrictions on the unvaccinated returning to the workplace, etc., have become extremely relevant. Although the legislator was previously cognizant of these concepts, they were not as acute as they are today. Faced with the realities of the pandemic, the legal infrastructures of many States were simply not ready for innovations that took root very quickly.<sup>3</sup> This instigated an urgent need to improve legal norms to properly regulate the conditions of the new labor reality.

Another significant feature of the discussion at hand is that COVID-19-related restrictions did not affect a separate country or region; they impacted all continents and countries. Although at the international level there are general norms aimed mainly at protecting labor rights, the regulation of labor relations in different countries varies due to the peculiarities of the legal system of each individual State. Thus, it is interesting to analyze different approaches to the regulation of topical issues in the field of labor legislation in Ukraine and individual EU member States.

For Ukraine, the issue of trend changes in the field of labor relations is also relevant because its Labor Code, which was adopted in 1971, is already over fifty years old. Although the code continues to be amended (most recently in 2021), its norms are still noticeably outdated. Indeed, Ukraine’s Labor Code is a mixture of norms adopted under various historical and economic conditions—some of which meet current needs, while others are outdated and cannot adequately regulate modern labor relations. For example, fifty years ago, Ukraine did not have such a developed service sector, particularly in the information technology (IT) sector, so the legislation promulgated during those times was more focused on industrial relations.<sup>4</sup> It should be noted, however, that the COVID-19 pandemic did not contribute to shortcomings in Ukrainian labor legislation; it only unmasked them. It is therefore useful to analyze the changes occurring in Ukrainian labor relations by analyzing current legislation to identify its shortcomings and omissions and to find the most beneficial ways to solve such associated problems.

Moreover, it is valuable not only to analyze Ukrainian legislation but also to compare it with the law of the EU and individual EU member States. European countries indeed often face the same problems as Ukraine (especially during the pandemic), but in some areas, their legislative approaches are much more effective than simply applying national legal norms. Since the two types of aforementioned trends are widespread, it is beneficial to study the approaches of the European legislator to solving topical problems of labor relations and to analyze the ensuing processes of their implementation in national legislation.

## LITERATURE REVIEW

In 2021, Australian lawyer Simon Obee analyzed the development of labor legislation over the previous several years and identified those issues that were discussed the most in 2020 and 2021, pointing out changes

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<sup>2</sup> Maryna Dei, “The System of Supervision and Control Over Labor Protection in the EU,” *Legal Horizons* 15, no. 1–4 (2023): 24–36, <https://legalhorizons.com.au/lh/article/view/6>; [https://doi.org/10.54477/LH.25192353.2022.15\(1-4\).pp.24-36](https://doi.org/10.54477/LH.25192353.2022.15(1-4).pp.24-36).

<sup>3</sup> Simon Obee, “10 Changes to Employment Law in 2020 & Trends for 2021,” *Employment Law* (Jan. 20, 2021), <https://www.eilegal.com.au/blog-news/10-changes-to-employment-law-in-2020-trends-for-2021/>.

<sup>4</sup> T. Kyrychenko, “Disadvantages of Legal Regulation of Labor Relations in Ukraine,” *Entrepreneurship, Economy and Law* 12 (2020): 96–103. (Ukrainian language).

made to the law of EU member States during that time.<sup>5</sup> Obee focused primarily on developments in the regulation of labor relations as influenced by the COVID-19 pandemic. He emphasized that, in response to the pandemic, an unprecedented number of changes to labor laws were made in 2020 as governments tried to cope with the impact of the virus on economies and jobs. Concurrently, there were also a number of (unrelated) legislative amendments promulgated concerning equality and non-discrimination.

Ukrainian researcher Olena Rym, in her 2021 PhD dissertation, formulated the definition of EU labor law, describing it as a system of norms in both narrow and broad senses.<sup>6</sup> Rym substantiated the conclusion that the current stage of development of EU law indicates that labor law is one of the few sectoral formations that collectively form the legal system of the EU. She noted that the adoption of the Treaty of Lisbon and the subsequent qualitative changes in the legal regulation of wage-labor relations testify to the transformation of EU labor law. Further, Rym found that the development of legal support for relations in the field of employment is at its beginning stage. Rym also studied the correlation between EU labor relations regulation and the law of Ukraine.

Sacha Garben, a professor at the College of Europe (Bruges), thoroughly analyzed the digitization aspects of labor law in the EU.<sup>7</sup> Specifically, she explored the modern topical direction of electronic document management and digitization from the perspective of labor relations. Garben argued that, in a digitalized economy, the online form of documents plays a decisive role, which can influence the economic process in various ways—in production, labor relations, and the organization of work.

Ukrainian researcher Marinya Dei studied and analyzed the area of remote work.<sup>8</sup> She examined the legal regulation of remote work in the context of the transformation of labor relations in the modern world and the emergence of new, atypical forms of employment. She also assessed the legal norms on remote work and highlighted the problems arising from this type of labor practice.

Other researchers have also examined trends in labor law, including Hetmantseva and Mytrytska (2021), Silchenko (2021), Kyrychenko (2020), Filipova (2019), De Stefano and Aloisi (2018), Risak and Dullinger (2018), Garben (2017), Formaniuk (2015), and Morozov (2011). Despite such a large body of scientific work on this topic, it nevertheless remains inadequately researched and debatable in legal science. In particular, insufficient attention has been paid to new branches of labor legislation, as well as to the compliance of domestic legal norms with EU law and standards and the practical implementation of adopted legal norms.

## MATERIALS AND METHODS

For the article, we resorted to the use of a system of philosophical, general scientific, and special methods that ensure the reliability of the results obtained and the achievement of the article's stated goals. The most commonly used method was the comparison method. Its use provided an opportunity not only to analyze the law of Ukraine, the EU, and the member States but also to compare different legal norms regulating the same issue in different jurisdictions and to determine which are the most advantageous. In addition, the authors applied the comparative method in the analysis of concepts and their uses in different norms. For example, the comparative method helped to identify differences among the legal regulation of remote work in Ukraine, Belgium, and France.

In addition, the comparison method was used to identify the hierarchical placement of EU law in the legal systems of the member States and to study the impact of EU acts on the law of Ukraine. The formal legal method was adopted to analyze the concepts that were used in the article, in particular remote work, home work, digitalization, etc. The application of the formal legal method gave us the opportunity to explore the regulation of labor relations in EU law and Ukrainian legislation and to identify any shortcomings of national legal acts. In the course of writing the article, we also used the method of historical knowledge in the context of studying the emergence of the legal regulation of wage-labor relations at the EU level, as well as the retrospective development of labor law in Ukraine.

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<sup>5</sup> Obee (n3).

<sup>6</sup> Olena M. Rym, "The Labour Law of the European Union and Its Impact on the Ukrainian Labour Law Development" (PhD diss., Ivan Franko National University of Lviv, 2021). (Ukrainian language).

<sup>7</sup> Sacha Garben, "Protecting Workers in the Online Platform Economy: An Overview of Regulatory and Policy Developments in the EU" (Luxembourg: Publications Office of the European Union, 2017), <https://osha.europa.eu/en/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments>.

<sup>8</sup> Dei (n2).

Further, the method of historical knowledge provided an opportunity to study previously adopted regulatory legal acts that influenced the formation of the legal regulation of the aforementioned trend areas and topical issues of labor law.

In the course of the study, we also applied the methods of scientific knowledge, which were used to examine the features and characteristics of remote work and home work, as well as the features of non-discrimination in labor relations. Using this method provided an opportunity to clarify ways to improve legislation in the context of current development trends and European standards, as well as ways to improve the rule of law and respect for human rights.

The application of the systematic method made it possible to generalize and systematize disparate information about labor law trends and those changes in legislation that arise as a logical reaction to such trends. In addition, the systematic method helped us to divide the current directions in the development of labor law into the two aforementioned categories: 1) those with a lengthy formation with a logical conclusion to the processes related to human rights (gender equality, inclusivity, non-discrimination, digitalization, etc.); and 2) those that arose suddenly under *force majeure* conditions (remote work, home work, permission for vaccinated employees to work at a physical premise, etc.), which are reflected in the conclusion section of the research paper.

The method of analysis and synthesis made it possible to study theoretical information, international legal acts, and Ukrainian legislation and, on that basis, to highlight the problems that exist in the area under review. This method was used for a general study of EU law in the context of the general regulation of labor rights by acts of EU primary and secondary legislation, as well as those legal acts that regulate certain labor issues.

## RESULTS AND DISCUSSION

### Development of EU labor law and its relationship with the law of the member States

Since the comparative element is key for adhering to the scope of this article, we found it appropriate to first consider the features of the regulation of labor relations in the EU and in the EU member States and also to determine how these relations sync with one another and alongside their counterparts in Ukraine. Initially, the development of labor law was not included in the goals of the formation of the EU since the EU was originally created for economic purposes.<sup>9</sup> However, with the expansion of the EU's powers and spheres of influence, its competence has expanded to include labor law. According to article 4 of the Treaty on the Functioning of the EU (TFEU), the EU has competence in a number of areas related to the social sphere. In particular, such issues include protecting employees in the event of termination of an employment contract; informing and consulting employees; improving working conditions to protect workers' health and safety; and providing social security and other social protections for workers.<sup>10</sup>

The emergence of the legal regulation of wage-labor relations at the EU level is associated with the will of the member States to delegate some of their powers in the field of employment to bodies and institutions at the supranational level. Legal researchers have linked the stages of the formation and development of EU labor law with the dates of the founding treaties of the European Communities, changes made to them, and the adoption of certain directives.<sup>11</sup> At the present stage of development, the EU pays considerable attention to human rights, including labor rights. Article 2(3) of the Treaty of Lisbon provides for the need to ensure the sustainable development of Europe based on balanced economic growth and the presence of a competitive social market economy while aiming for full employment and social progress. Thus, although legal regulation is within the competence of the EU member States, the EU itself may regulate some labor-related matters.

It is important to note that the principle of "law effectiveness" applies to EU member States. The essence of this principle is that each country implementing the EU's policy in a certain area must not only formally apply the provisions but also act in such a way as to achieve the result originally conceived by these norms.<sup>12</sup> Based on the

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<sup>9</sup> The EU harkens back to the formation of the European Steel and Coal Community in 1952. See [https://european-union.europa.eu/principles-countries-history/history-eu/1945-59\\_en](https://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en) (last visited Oct. 21, 2023).

<sup>10</sup> European Union. EUR-Lex, *Consolidated version of the Treaty on the Functioning of the European Union* (2012), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.

<sup>11</sup> Rym (n6) 507.

<sup>12</sup> See European Union. European Commission, *Areas of EU Action*, [https://commission.europa.eu/about-european-commission/what-european-commission-does/law/areas-eu-action\\_en](https://commission.europa.eu/about-european-commission/what-european-commission-does/law/areas-eu-action_en) (last visited Nov. 2, 2023).

foregoing, it can be argued that the regulation of labor relations falls within the competence of the member States and is regulated by them independently at the domestic level, taking into account the current requirements of the labor market of a particular State. At the same time, in those areas that fall within the competence of the EU, countries follow its regulatory documents, incorporating them into national law. With regard to the collective labor law of the EU, it must be emphasized here that multinational associations of workers and employers have been formed at the EU level. Social dialogue takes place at sectoral or intersectoral levels.<sup>13</sup>

Even though Ukraine is not an EU member State, its signing of an Association Agreement with the EU in 2014 reflects Ukraine's strong pro-European aspirations and its willingness to adopt European standards and values. In general, it should be emphasized that the European vector for the development of labor law in Ukraine as a priority has been evident since 1994 with its signing of the Partnership and Cooperation Agreement with the European Communities.<sup>14</sup> Scientists have repeatedly pointed out that the transformation of Ukrainian labor law as influenced by European integration should occur in compliance with such basic requirements as gradualness, consistency, thoughtfulness, long-term strategy, a mandatory transition period of adaptation, etc.

An analysis of the conformity of Ukrainian labor law with the relevant EU *acquis* demonstrates the rather insignificant effect of Ukraine's legislative activity in the context of European integration, as well as the low impact of EU labor law on domestic legislation. At the same time, however, it is not possible to talk about a complete inconsistency between Ukrainian and EU norms. Ukraine's European aspirations, as well as current challenges in the field of labor relations, make the EU and Ukrainian standards similar in many key areas, which further reflects Ukraine's acceptance of EU standards.

### **Non-discrimination, equality, and inclusivity as important steps for improving labor law**

In the field of human rights protection, the issue of non-discrimination occupies a significant place since it provides equal conditions for everyone regardless of gender, social status, citizenship, origin, nationality, race, religion, etc. We can safely say that the principle of non-discrimination in all spheres is one of the basic elements of human rights. With this in mind, non-discrimination can be identified as one of the main trends in labor law and the principle of the equality of rights and opportunities as one of its fundamental principles—the latter based on the generally recognized principles and norms of international law, which are in turn based primarily on ideas of natural law, such as freedom, justice, and equality, which affect all norms of labor law.<sup>15</sup>

The equality of rights and opportunities as a fundamental principle in the field of labor has been enshrined in national legislation. The 1996 Constitution of Ukraine establishes constitutional and legal norms of a general nature, which are fundamental for constitutional and legal regulation. Therefore, the principle of equality of rights and freedoms, enshrined in the constitution, is fundamental for the formation of the entire system of the legal status of the individual.<sup>16</sup> According to the provisions of Ukraine's Labor Code, namely articles 21 and 22, the State ensures the equality of labor rights for all citizens regardless of gender, and it prohibits any direct or indirect restriction of rights or the establishment of direct or indirect advantages when concluding, changing, or terminating an employment contract based on gender.<sup>17</sup>

In accordance with articles 1, 7, and 8 of the Law of Ukraine "On Collective Agreements and Contracts" of 1993, a collective agreement or contract is concluded on the basis of current legislation; obligations assumed by the parties to regulate production, labor, or socio-economic relations; and the harmonization of the interests of

<sup>13</sup> V.V. Formaniuk, "Labor Law in the Legal System of the European Union," *Journal of Civilization* 18 (2015): 180–85. (Ukrainian language).

<sup>14</sup> Ukraine. Verkhovna Rada of Ukraine, *Partnership and Cooperation Agreement between Ukraine and the European Communities and their Member States* (June 14, 1994), [https://zakon.rada.gov.ua/laws/show/998\\_012#Text](https://zakon.rada.gov.ua/laws/show/998_012#Text). (Ukrainian language).

<sup>15</sup> N. Hetmantseva and H. Mytrytska, "Ensuring Equality of Rights and Opportunities in Case a Person Realizes His Ability to Work," *Entrepreneurship, Economy and Law* 5 (2021): 49–56. (Ukrainian language).

<sup>16</sup> Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, Constitution of Ukraine (June 28, 1996), <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>. (Ukrainian language).

<sup>17</sup> Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, Labor Code of Ukraine (1973), <https://zakon.rada.gov.ua/laws/show/322-08#top>. (Ukrainian language).

employees and employers—in particular, ensuring equal rights and opportunities for women and men.<sup>18</sup> Discrimination on the basis of gender in labor relations is manifested as follows: division into “female” and “male” professions and types of work; the *de facto* exclusion of women or men on the basis of their gender when receiving vocational training or training in a particular profession; the 25% pay gap between women and men working in the same industry; informal employment in which pregnant women and mothers with children under three cannot receive legally guaranteed social payments and benefits related to their maternal status, etc. Also noteworthy is the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” of 2005, which defines the achievement of equal status for women and men in all spheres of society by legally ensuring equal rights and opportunities for women and men, eliminating gender discrimination, and applying special temporary measures aimed at correcting the imbalance between women’s and men’s opportunities to exercise the equal rights that the constitution and laws of Ukraine grant them.<sup>19</sup>

An important change in the area of non-discrimination was also the adoption in 2021 of Bill no. 5266, “On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Protection of Employees’ Rights.” This bill provides for a number of changes in labor legislation, in particular, the possibility of concluding collective agreements not only by legal entities but also by sole proprietors. Bill no. 5266 also refers to the need to expand the list of grounds on which discrimination against employees is prohibited, as well as to establish a mandatory explanation of the reason for refusing employment at an individual’s request. It is particularly important to note that this bill refers to and implements the provisions of EU Directives 2000/43/EC (equality regardless of ethnic and racial origin) and 2000/78/EC (equal treatment in the world of work). The incorporation of the provisions of the directives into the bill once again testifies to Ukraine’s intention to adopt European standards in the field of labor and confirms the European vector of Ukraine’s development. In addition, the adoption of European norms standardizes Ukrainian law and EU law.<sup>20</sup>

At the EU level, the issue of non-discrimination and equality is also relevant and is reflected both in EU law and in the legislative norms of individual member States. The principle under consideration is enshrined in the founding documents of the EU. The TFEU, as amended by the Treaty of Lisbon, states that the EU takes action to counter discrimination on various grounds (gender, race, religion, orientation, etc.). The EU Charter of Fundamental Rights also contains norms on non-discrimination, including social status, language, and nationality.

In addition, the issue of non-discrimination and equality in employment has also been raised in acts of subsidiary legislation. The following are some examples of relevant EU Directives: Directive 2006/54/EC of July 5, 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);<sup>21</sup> Directive 2000/43/EC of June 29, 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;<sup>22</sup> and Directive 2000/78/EC of November 27, 2000, establishing a general framework for equal treatment in employment and occupation.<sup>23</sup> Thus, it can be stated that the issue of equality and non-discrimination occupies a significant place in EU law. Its development took a rather long period of time, in contrast to the trend that emerged in the labor law ambit and took shape legislatively, relatively recently, under the influence of drastic changes in the world, particularly the COVID-19 pandemic.

<sup>18</sup> Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, On Collective Agreements and Contracts (1993), <https://zakon.rada.gov.ua/laws/show/3356-12#Text>. (Ukrainian language).

<sup>19</sup> Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, On Ensuring Equal Rights and Opportunities for Women and Men (2005), <https://zakon.rada.gov.ua/laws/show/2866-15#Text>. (Ukrainian language).

<sup>20</sup> Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, On Amendments to Certain Legislative Acts of Ukraine Concerning Strengthening the Protection of Workers’ Rights (2021), <https://ips.ligazakon.net/document/view/JI04680I?>. (Ukrainian language).

<sup>21</sup> European Union. Council of the European Union, *Directive 2006/54/EC On the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)* (2006), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>.

<sup>22</sup> European Union. Council of the European Union, *Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* (June 29, 2000), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043>.

<sup>23</sup> European Union. Council of the European Union, *Establishing a general framework for equal treatment in employment and occupation* (Nov. 27, 2000), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:html>.

Having considered the legal regulation of the issue of non-discrimination in the law of Ukraine and the EU, it can be rightly noted that the relevant legal norms are quite extensive and comprehensive. Even though all relevant legal norms in the context of equality and inclusivity have existed for a long time in the legislation of both the EU and Ukraine, we still consider it appropriate to attribute non-discrimination to modern trends in labor law. Today, the European public is especially concerned about the issues of equality in all spheres, including labor. Despite the legal consolidation of non-discrimination, in practice, there have often been instances of violations of this principle in labor relations.<sup>24</sup> For example, there have been numerous court rulings all over Europe in the contexts of refusing to employ a disabled person, dismissing a pregnant woman, lowering a woman's salary, etc. These types of disputes are perhaps now at their apex, with human rights influencing the development of all spheres to actualize the practical component of equality in labor relations. This is why we refer to non-discrimination, equality, and inclusivity as falling within the scope of modern trends in labor law.

### Digitalization of labor relations

Digitalization is one of the more complex and little-studied areas of transformation of the global economy. The active use of digital technologies for processing, storing, and broadcasting information contributes to the digitalization of business operations, the spread of international e-commerce, and the formation of a digitalized global labor market. Many countries have long abandoned paper-based workflow and are transitioning to electronic. Such changes have also impacted Ukraine, including the field of labor relations.

Ukraine has long been taking small steps towards the digitalization of various areas. For example, in 2003, the Law of Ukraine "On Electronic Documents and Electronic Document Management" was adopted. This law established the basic organizational and legal framework for electronic document management and the use of electronic documents.<sup>25</sup> In 2015, the Law "On Electronic Commerce" was adopted, which defined the organizational and legal framework for activities in the field of e-commerce in Ukraine.<sup>26</sup> But perhaps the loudest statement was the country's development and adoption of the "Diia" application at the end of 2019. Diia replaced physical identity documents with their electronic versions, which have equal legal force. Thus, Ukraine has confidently announced its intention to digitize and switch to electronic document management.

Such innovations have not bypassed the field of labor relations. In 2021, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Accounting for Employee Labor Activities in Electronic Form" was adopted. The main innovation of the law can be found in changes made to article 48 of the Labor Code, which states: "Recording of an employee's labor activity is carried out in electronic form in the register of insured persons of the State Register of Compulsory State Social Insurance."<sup>27</sup> To simplify, the law introduced a transition to electronic work-record books or, rather, to a new procedure for recording information about an employee's labor activity through the State Register of Compulsory State Social Insurance. It is expected that the transition from paper to electronic form will take place over the next five years. Currently, it is possible to use both paper copies of work-record books and information about labor activity in electronic form. Thus, it can be argued that the global trend in the field of digitalization has had an impact on Ukraine as well.

Here, we should also mention the 2021 Order of the Ministry of Health no. 1066, "Some Issues of Forming Medical Conclusions on Temporary Disability and Conducting their Verification." E-sick leave became available in the insurer's office on the web portal of the Pension Fund of Ukraine due to the simplification of the employer's procedure for obtaining data on sick-leave certificates. Accordingly, the correct operation of this tool is associated with the availability of accurate information about the insured person in the Pension Fund of Ukraine. Although the provisions of Order no. 1066 simplify certain interactions in hospital matters, in practice, problems have arisen in

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<sup>24</sup> O. Yaroshenko, V.M. Harashchuk, O. Moskalenko, N.O. Melnychuk, and Y. Burniagina, "The Impact of the Global Financial Crisis on the Legal Regulation of Labor Migration," *Estudios de Economía Aplicada* 39, no. 9 (special issue) (2021).

<sup>25</sup> Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, Law of Ukraine no. 851-IV, On electronic documents and electronic document management (2003), <https://zakon.rada.gov.ua/laws/show/851-15#Text>. (Ukrainian language).

<sup>26</sup> Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, Law of Ukraine no. 675-VIII, About e-commerce (2015), <https://zakon.rada.gov.ua/laws/show/675-19#Text>. (Ukrainian language).

<sup>27</sup> Ukraine. *Bulletin of the Verkhovna Rada of Ukraine*, Law of Ukraine no. 1217-IX, On Amendments to Certain Legislative Acts of Ukraine Concerning the Accounting of Employee Labor Activities in Electronic Form (2021), <https://zakon.rada.gov.ua/laws/show/1217-20#Text>. (Ukrainian language).

terms of the unstable operation of the system and insufficient technical support for hospitals, which, we hope, will be finalized considering the trend towards digitalization.<sup>28</sup>

The European experience in document management began in the 1990s. The United Nations Commission on International Trade Law (UNCITRAL) played a special role in this. In 1996, the UNCITRAL Electronic Commerce Act<sup>29</sup> was passed. In 2000, the EU adopted Directive 2000/31/EC of June 8, 2000, on certain legal aspects of information society services in the Internal Market, in particular e-commerce.<sup>30</sup> This trend has inevitably influenced the employment sector, as both employers and employees are experiencing a growing need to reduce the amount of paper documents used in labor relations. At the same time, the use of electronic documents raises a number of practical issues.<sup>31</sup>

Using the example of Hungary as an EU member State, let us consider digitalization in the context of labor workflow. Hungary's Labor Code of 2012 specifies that legal documents in the context of labor relations can be placed in electronic form unless otherwise provided by law or by agreement of the parties.<sup>32</sup> The law requires that the main documents relating to labor relations be in writing, such as documents establishing, amending, or terminating an employment contract; information notices establishing working conditions; and notices of collective dismissal. As a rule, if the contract must be concluded in writing, then its modification and termination must also be in writing. In addition, at the employee's request, the employer is required to make a statement in writing.<sup>33</sup>

Although Hungary's Labor Code does not provide clear guidance on the written form, it does specify what requirements electronic documents must meet to be considered written statements. An electronic document can be qualified as a written statement if it can properly record the information contained in it without changes (which allows its content to be restored later); identify the person performing the legally significant action; and record the date when the action was performed.<sup>34</sup>

In addition to the above, the Hungarian law does not establish any strict requirements for electronic documents. In particular, it does not require parties to use electronic or so-called "qualified" electronic signatures. Thus, it can be argued that the digitalization of labor relations is a global trend that is developing both in Ukraine and in the EU. In striving for convenience and environmental friendliness through the rejection of paper information carriers, digitalization in labor law has become a trend, and we believe that it will only grow and expand. In addition, a unified electronic system greatly simplifies the storage, receipt, and transmission of documents.

### **Remote work as the main trend of modern labor law related to the pandemic and its legal implementation**

Remote work has seemingly become the main trend in labor relations. Initially, the mass movement of employees to work remotely began as a necessary (albeit temporary) measure of isolation under lockdown conditions. However, since the pandemic did not allow a return to normal, working from home has become a long-term reality for millions of employees around the world. Businesses have had to quickly build the infrastructure and equipment for teleworking, address the challenges of employees stranded abroad due to closed borders, and manage the range of risks associated with teleworking (including cybersecurity, payroll, health and safety, home

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<sup>28</sup> Ukraine. Ministry of Health of Ukraine, Order no. 1066, Some issues of forming medical reports on temporary incapacity for work and conducting their inspection (2021), <https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukraini-vid-01062021-1066-dejaki-pitannja-formuvannja-medichnih-visnovkiv-pro-timchasovu-nepracezdatnist-ta-provedennja-ihnoi-perevirki>. (Ukrainian language).

<sup>29</sup> United Nations. Commission on International Trade Law, *The UNCITRAL Model Law on Electronic Commerce* (June 12, 1996), [https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic\\_commerce](https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce).

<sup>30</sup> European Union. Council of the European Union, Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. (June 8, 2000), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>.

<sup>31</sup> Valerio De Stefano and Antonio Aloisi, "European Legal Framework for 'Digital Labour Platforms'" (Luxembourg: Publications Office of the European Union, 2018), <https://ssrn.com/abstract=3281184>.

<sup>32</sup> Hungary. Labour codes, general labour and employment acts, Act 1/2012 promulgating the Labour Code. (Dec. 13, 2011). [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_isn=89886&p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=89886&p_lang=en).

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.



office reimbursement, etc.). This has presented unprecedented practical challenges, as many countries lacked the legal infrastructure to deal with the obligations and rights of employers and workers regarding working from home on such a scale.<sup>35</sup>

Today, many companies have managed remote work well, so they do not plan to return entire departments to the office. Many employees are now accustomed to such working conditions. Moreover, companies that offer remote work have a competitive advantage compared to the organizations that offer only classic office work. Naturally, labor legislation has had to adapt as well. For instance, in Ukraine, we allow the relocation of employees for remote or home work if this does not contradict the essence of the employee's job duties. In 2021, Ukraine's Labor Code was supplemented with two new articles: article 60(1) and article 60(2). Article 60(1) regulates so-called "home work." According to its provisions, an employee performs their work at the place of residence or at another place outside the production or working premises of the owner of the enterprise. It is important to note that in the case of such home work, the employee's place is fixed, and it cannot be changed at the employee's own request. Such a place is subject to change only if the employee issues a prior warning to the employer and is unable to perform their labor duties there. At the same time, the home worker is subject to the enterprise's general mode of operation.

Article 60(2) of Ukraine's Labor Code regulates the remote work of employees. Remote work is a form of work organization in which work is performed by an employee outside the work premises in any place of the employee's choice using communication technologies. The main difference between home work and remote work is that, in the first case, work is performed in a clearly defined place, while in the second, work is performed in a place of the employee's choice. In a pandemic, the possibility of relocating an employee to a remote or home-based form of work is carried out without the obligatory conclusion of an agreement on this type of work. The relocation takes place based on the employer's order. Undoubtedly, the flexibility of such an approach in determining the place of work of an employee is positive for the development of labor relations in Ukraine. First, it can protect the team from COVID-19 exposure in the workplace. Second, this does not stop the functioning of the enterprise during the pandemic. Third, it prevents the dismissal of those who for certain reasons cannot leave their homes for a long time—e.g., caring for disabled family members or children.<sup>36</sup>

However, although the legislator has regulated the issue of the work of employees outside the working premises, which is definitely a plus, it has also created a number of disadvantages. First, the legislator does not relieve the employer of the obligation to determine the employee's workplace or inform them about working conditions, such as indicating those that are dangerous or harmful.<sup>37</sup> At the same time, the employer cannot legally visit the employee's home, which they use for remote work. Also, the employer must provide the employee with the necessary means for work, and this entails additional costs for the purchase of computer equipment and, in some cases, the creation of a secure network. Despite this, according to Buffer and AngelList's "State of Remote Work 2020," 87% of business owners supported the idea of working from home, and only 13% opposed the practice.<sup>38</sup> Given the above, it is useful to state the following objective fact: every year, the number of companies that allow their employees to work remotely increases.<sup>39</sup>

It should be noted that the legal regulation of remote work in the EU and Ukraine began under fundamentally different conditions.<sup>40</sup> Amidst the influence of globalization and the weakening of collective labor rights, the idea of

<sup>35</sup> See DLA Piper, "Global Guide to Remote Working" (2020), [https://knowledge.dlapiper.com/dlapiperknowledge/attachment\\_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAWq6WkuPzQQFxFmi1djt8Nd&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQbuwypnpZjc4%3D&attdocparam=pB7HEsg%2FZ312Bk80IuOIH1c%2BY4beLEAeVrDrfpAIV0I%3D&fromContentView=1](https://knowledge.dlapiper.com/dlapiperknowledge/attachment_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAWq6WkuPzQQFxFmi1djt8Nd&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQbuwypnpZjc4%3D&attdocparam=pB7HEsg%2FZ312Bk80IuOIH1c%2BY4beLEAeVrDrfpAIV0I%3D&fromContentView=1) (last visited Oct. 21, 2023).

<sup>36</sup> S. Silchenko, "Distance Work: Current Status and Prospects for the Development of Legal Regulation," *Entrepreneurship, Economy and Law* 1 (2021): 93–99. (Ukrainian language).

<sup>37</sup> O.M. Yaroshenko, N.O. Melnychuk, S. Moroz, O. Havrylova, and Y. Yaryhina, "Features of Remote Work in Ukraine and the European Union: Comparative Legal Aspect," *Hasanuddin Law Review* 7, no. 3 (2021): 136–49, <https://doi.org/10.20956/halrev.v7i3.3218>.

<sup>38</sup> Buffer and AngelList, "The 2020 State of Remote Work," <https://buffer.com/state-of-remote-work/2020>.

<sup>39</sup> See Remote, "Remote Workforce Report 2023," <https://remote.com/remote-workforce-report>.

<sup>40</sup> Martin Risak and Thomas Dullinger, "The Concept of 'Worker' in EU Law: Status Quo and Potential for Change" (Brussels: European Trade Union Institute [ETUI], 2018), <https://www.etui.org/publications/reports/the-concept-of-worker-in-eu-law-status-quo-and-potential-for-change>.

individual labor regulation by agreement between the worker and the employer has spread in many Western countries.<sup>41</sup> In 2002, within the framework of the EU, a Framework Agreement on Telework was adopted between the European Commission and the European associations of trade unions and employers.<sup>42</sup> Here, the term “telework” should be clarified. It was popularized about ten years ago to characterize atypical employment relationships, namely when the growth of technology and the mass use of telecommunications led to an increasing amount of work performed outside the physical location of the employer, most often at the employee’s home; the term “telework” actually means remote work.

Returning to the aforementioned Framework Agreement of 2002, it is useful to highlight several of its key provisions. For example, it focuses on the need to protect the privacy of a remote worker because such work involves the use of telecommunications equipment. The responsibility for the storage of personal data obtained in the course of monitoring the work of a remote employee lies with the employer. The provisions of article 10 of the agreement establish that teleworkers should have the same opportunities as the in-office workers in terms of involvement in the work process or training. As noted, this agreement was adopted in 2002, which indicates that the issue of remote work has long been relevant in Europe, and it has not lost its relevance. As can be noted from the provisions of the 2002 agreement, they are mostly aimed at protecting the employee in the context of equality, non-discrimination, and the protection of privacy.

Considering the legal regulation of this issue in individual member States, Belgium is particularly noteworthy. In its legislation, a provision on remote work was included in Collective Agreement no. 85 of 2005, as well as in the Act on Possible and Managed Work of 2007. Per the 2005 collective agreement, work can be conducted at home (in a house, apartment, or any other chosen place), in another location, such as an auxiliary (decentralized) office chosen by the employer for the employees, or work may be conducted remotely if the work is mobile in nature (for this type of work, movement is an integral part). This category of workers includes sales managers, medical representatives, and industrial workers who provide services at the customer’s premises.<sup>43</sup>

Under Belgian law, agreements must be reached on the following points:

1. the working hours of the remote worker if different from the working hours that must be observed on the company’s premises
2. methods for monitoring the achievement of results and/or criteria for evaluation
3. periods during which the remote worker must be available to combine private life and remote work
4. ways to contact a remote worker

The workload and performance criteria of a remote worker are similar to those of employees who work in the physical workplace.<sup>44</sup> The employer must ensure that the remote worker’s privacy is respected if they exercise control over the results or performance of the work. The employer informs the employee of the methods used, if applicable.

In France, remote work is regulated on the basis of the French Labor Code. According to its provisions, remote work is any work performed by an employee outside the premises (office) of the employer on a voluntary and regular basis, using information and communication technologies within the scope of an employment contract or annex to it. Among the rights and obligations of the employer, the French Labor Code highlights the following: the employer bears all costs associated with the implementation of remote work, including the cost of equipment, software, and correspondence costs; the employer determines the priorities for the use or non-use of remote work; the employer sets the time (period) during which s/he can usually contact the employee; and the employer places restrictions on the use of equipment.<sup>45</sup>

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<sup>41</sup> N.M. Zayed, F.O. Edah, S. Darwish, K.M. Anwarul Islam, H. Kryshital, V. Nitsenko, and O. Stanislavyk, “Human Resource Skill Adjustment in Service Sector: Predicting Dynamic Capability in Post COVID-19 Work Environment,” *Journal of Risk and Financial Management* 15, no. 9 (2022): 402–14, <https://doi.org/10.3390/jrfm15090402>.

<sup>42</sup> European Union. European Commission, *Framework agreement on telework* (July 16, 2002), [https://resourcecentre.etuc.org/sites/default/files/2020-09/Telework%202002\\_Framework%20Agreement%20-%20EN.pdf](https://resourcecentre.etuc.org/sites/default/files/2020-09/Telework%202002_Framework%20Agreement%20-%20EN.pdf).

<sup>43</sup> Belgium. Service public federal. *Convention collective de travail no. 85 concernant le télétravail conclue au sein du Conseil national du Travail* (Nov. 9, 2005), <https://cnt-nar.be/sites/default/files/documents/CCT-ORIG/cct-085-%2809.11.2005%29.pdf>.

<sup>44</sup> Roger Blanpain, *Labour Law in Belgium*, 5th ed. (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2012).

<sup>45</sup> France. Legifrance, *Code du travail* (1910), <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006072050/>.

When compared with Ukrainian legislation, neither Belgian nor French law distinguishes between remote work and home work, and thus there are no legal consequences arising from such a distinction. At the same time, the legislation of all three countries insists on the presence of a telecommunications element in the work of a remote employee, which suggests that remote work is characterized by the following features (based on an analysis of the legislation of the countries considered): work outside the workplace of the employer; a range of rights and obligations also inherent in non-remote work; an availability of information and communication technologies.

It is worth noting that the issue of remote work has received a great deal of attention in the context of international law. It was raised in a number of ILO instruments, in particular Convention no. 177, “Home Work Convention,” 1996;<sup>46</sup> Recommendation no. 184, “Home Work Recommendation,” 1996;<sup>47</sup> ILO Convention no. 189 “Domestic Workers Convention,” 2011;<sup>48</sup> and others. This testifies to the very high importance of regulating the place of remote work in labor relations without allowing any violations of rights or discrimination.

In sum, the issue of remote work appeared much earlier in the law of the EU member States than in the law of Ukraine. However, both remote and home work became especially relevant during the pandemic. Nevertheless, the considered norms show a significant similarity between Ukrainian domestic and European law. Therefore, it can be argued that Ukraine still follows the European tradition in the regulation of remote work, although it has its own distinct rules, which demonstrates the interest of the Ukrainian legislator in the proper legal regulation of this form of employment.

## CONCLUSION

Trends in the labor law of Ukraine and the EU as a whole are very similar, which is likely the result of two factors: a general trend in the development of labor law as related to human rights matters; and the COVID-19 pandemic, which significantly affected labor relations around the world. Thus, trends in the field of labor law can be divided into two categories: those whose formation took a long time and were the logical conclusion of processes related to human rights (gender equality, inclusivity, non-discrimination, digitalization, etc.); and those that arose suddenly under the influence of *force majeure* conditions (remote work, home work, the admission of vaccinated employees to work premises, etc.).

In general, changes to the labor legislation of Ukraine were long needed since the country’s Labor Code is rather outdated, and many norms do not meet the challenges of the new global reality. Unlike Ukrainian law, the law of the EU and its member States is more modern and is designed for existing relationships. EU law has long recognized and regulated the concepts that the Ukrainian legislator first encountered during the pandemic. For example, in EU law, remote work has been regulated since 2002, and digitalization in labor relations since 2000. Ukrainian law only introduced these innovations into its legislative *corpus* in 2021, which reflects a slower development of domestic law. On the other hand, the fact that the Ukrainian legislator has made appropriate changes to national laws and modernized some areas of national law reflects a desire for European legal values and standards.

Non-discrimination, equality, and inclusivity have long been incorporated in EU law and in Ukraine. Their legal consolidation is also a very important element in the context of the protection of human rights. Unsurprisingly, protection against discrimination on various grounds is a modern trend in labor law. Despite the incorporation of this protection in EU and Ukrainian law, in practice, there are still cases of human rights violations based on various factors. Thus, equality and non-discrimination should be further developed and promoted on a global scale. Digitalization is also a current trend, and this is observed not only in labor relations but also in other areas of legal regulation. The principles of environmental friendliness, reasonable consumption and savings, and the recognition of the unnecessary use of paper, along with trends towards saving time, physically isolating, and social distancing, bring awareness of the importance of simplified access to documents through electronic document management for both government agencies and ordinary citizens.

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<sup>46</sup> International Labour Organization, *Home Work Convention* (1996), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312322](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312322).

<sup>47</sup> International Labour Organization, *Home Work Recommendation* (1996), [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100\\_INSTRUMENT\\_ID:312522](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312522)

<sup>48</sup> International Labour Organization, *Domestic Workers Convention* (2011), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189).

Finally, it should be noted that some EU member States (Belgium, France) operate under the concept of “telework,” without dividing it into any other categories or subdivisions. At the same time, however, labor laws of other EU member States and Ukraine use two different categories—“home work” and “remote work,” although the applicable legal acts have similar traits. It can thus be argued that remote work is characterized by the following features (based on the analysis of the legislation of the countries considered): work outside the workplace of the employer; a range of rights and obligations also inherent in non-remote work; and the availability of information and communication technologies.