

Legal Needs of Informal Employees in Ukraine: causes, consequences, possible solutions

Executive Summary

Background

In recent years, the topic of informal labor relations has become especially relevant in the world. Informality is a complex, multidimensional and confusing social phenomenon, which in its various manifestations is faced by any country, regardless of economic development. Difficulties in the study of this phenomenon are due to 1) the nature of the object itself, hidden from the eyes of the researcher; 2) blurred boundaries of the sphere of informal employment; 3) the difficulty of determining the scale and evaluation of the parameters of the phenomenon due to the lack of reliable information about it and the significant discrepancy between the results obtained by different evaluation methods; 4) the lack of a clear and structured concept that defines the object of study and clear criteria that allow it to include a particular type of work, which qualifies as employment.

At the international level, a final agreement has not yet been reached in discussing common terminology for describing forms of employment that do not meet the law's requirements. The methodological provision on the statistical definition of informal employment, approved by the 17th International Conference of Labor Statistics in 2013, proposes to define **informal employment** as the total number of informal jobs in any formal or informal sector enterprises or households over a period of time. The International Labor Organization (ILO) and the European Commission also use the term "**undeclared employment**" - any type of paid activity that is perfectly legal in origin (i.e., criminal activity is completely excluded) but undeclared in the relevant government agencies.

In Ukraine, the concept of undeclared work is known only to a narrow circle of interested professionals. To describe various forms of employment that do not meet the legislation requirements, Ukraine officially uses two concepts: the shadow economy and the informal economy. **Informal economy** is any activity of employees and economic units that is not covered by law or in practice or is not sufficiently covered by formal norms (does not include illegal activities). **Shadow economy** - the activity of business entities that is not prohibited by law, which is hidden from public authorities to evade taxes, social security contributions, compliance with minimum wage standards, maximum working hours, safety standards, and sanitation, from specific administrative procedures, in particular the completion of statistical reports and other administrative forms.

In essence, this understanding of the "shadow" economy is in line with the international definition of the "informal economy" and European "undeclared activities" in the formal sector. But this approach is aimed at studying the activities of only economic entities and estimates only the value component of the "shadow" economic turnover. This approach does not allow single out the workers involved in the "shadow" circulation and to establish to what extent the undeclared nature of their activities violates social and labor rights.

Informal employment creates many negative consequences and risks both for the employees and society as a whole. Employees are deprived of the state-guaranteed salary, violated working time restrictions and illegal dismissals, lose their length of service, opportunities to use state guarantees and benefits, and their chances of obtaining legal protection are minimal. For society, informal employment is, first of all, a decrease in budget revenues at all levels, which affects the government's ability to provide public services, implement socio-economic development programs, and maintain the social security system.

In addition to affecting the deteriorating public health, the COVID-19 pandemic has had a significant impact on the economy. A substantial proportion of businesses with the introduction of lockdown restrictions faced a decrease in the number of customers and, consequently, a reduction in the volume of work. In this regard, employers had to reduce working hours or reduce the volume of work and, accordingly, reduce the salaries of employees, sending employees on long-term leave at their own expense, reducing staff, and closing the company. This situation has significantly affected informally employed people.

The COVID-19 pandemic has also profoundly affected rethinking the role of social protection in ensuring social justice. Demographic shifts, prolonged urbanization, and decentralization of public services have profoundly affected the population's needs. The existing social protection system no longer meets these needs. The problem of informal employment exacerbates the situation. Informal workers do not fall into any of the categories covered by social protection: they are not extremely poor, they have an income, but they do not have an employer who pays social security contributions for them. It is difficult for the government to identify informally employed workers and develop effective protection mechanisms for them, as this population group is largely invisible or excluded from official statistics.

Reducing informal employment is a structural problem that requires applying a set of actions, methods, and efforts of all stakeholders - trade unions, employers, central and local authorities, and civil society.

About the study

The study's objective is to obtain objective data on the legal needs and problems of informally employed persons in the labor sphere, to develop recommendations for overcoming these problems.

The study covered people involved in informal employment, including those who:

- work informally / informally (refusal of legal employment or the desire of the person not to formalize the employment relationship);
- receive part of the salary informally / informally ("in an envelope");
- provide "home" services, carry out handicraft production;
- work informally / informally part-time;
- perform temporary or one-time services.

The study lasted from November 2020 to May 2021 and included three components:

- 1) analytical (analysis of relevant Ukrainian and international legislation, scientific publications, administrative and statistical data);
- 2) qualitative (6 focus group discussions and 15 in-depth virtual interviews using video communication);

- 3) quantitative (survey of 808 respondents by telephone interview and online survey: 213 officially employed and 595 informally employed).

Study findings

Informal employment in Ukraine

- Mainly informal working professions, low-skilled, technical professions, which are replaced by the latest technologies, professions in intellectual labor.
- On the scale of the settlement: in small towns, villages, and large cities, there are prerequisites for forming the informal employment sector. Despite this, in small towns, villages, hamlets, the probability of forming informal employment is higher.
- Informal employment is more typical of such industries as trade, construction and repairs, personal services, hotel and restaurant business, household assistance. According to the State Statistics Committee, it is also common in agriculture, forestry, and fisheries. Informal employment is widely represented in small and medium-sized businesses, to a lesser extent in a large business, almost absent or very rare in the public and municipal sectors (mainly in the form of fixed-term civil law agreements).
- According to a quantitative survey, which is more characteristic of urban and better educated pre-retirement workers, younger and middle-aged women were the most prone to informal employment. The informally employed were slightly less educated and reported lower average monthly incomes of their households compared to the officially employed. The assumption that vulnerable groups and recipients of state social assistance are much more prone to informal employment has not been confirmed. Among the informally employed, part-time work, combining work or part-time work with study, retirement, or maternity leave are more common. The average duration of informal employment was four years, and formal - 9.5 years. There is a combination of two or three forms of employment at the same time.
- The main factors that motivate people to work informally are higher wages due to tax avoidance and a more flexible work schedule. Other advantages are the ability to receive cash payments conveniently, change jobs quickly, and remote work. At the same time, such reasons as lack of specialized education for a specific position, unwillingness to collect the necessary documents for official employment, reluctance to have a record of a particular place of work in the employment record, the ability to receive benefits (subsidies) or unemployment benefits from the employment service reasons to choose this form of work (based on the results of a quantitative survey).

Incentives for formal employment

- Although less than a third of informally employed respondents stated that their employment situation was due to the employer's reluctance to employ them properly, six out of ten respondents had officially reported unsuccessful attempts to find employment. More than three-quarters of informally employed respondents perceive their situation as temporary and are going to find a job or register their employment properly. Only 19% of respondents are not going to get a formal job. Thus, the main barriers to the mass transition of workers from the category of informally employed to the category of officially employed are the inability or unwillingness of employers to satisfy such a request from employees. This study revealed only indirect reasons for this position of employers. Still, this information is insufficient, and there is a need for additional studies of informal employment through the prism of the needs and problems of business, especially small and medium.
- The first incentive for formal employment is financial. If the level of wages is high enough, it will be a very significant advantage in favor of formalization for eight out of ten respondents. In addition, there is an increased interest among respondents in the "social package," paid leave, and sick leave, and the least essential incentive is the accrual of retirement.
- Informally employed workers are ambivalent about a future pension or its absence. Some focus group respondents do not consider it necessary to accumulate work experience due to distrust in the stability of the social protection system. This question is indifferent to older respondents who

have worked informally for most of their lives. If it is now impossible to count on the length of service required to receive a decent pension, they focus on today's earnings, even if the work is informal.

- Although in recent years the government has taken significant steps to inform the public about the negative consequences of informal employment, improving the regulatory framework governing business activity, government measures to deregulate economic relations, which would affect reductions and informalities, are imperfect, complex, and contradictory. The regulatory framework still needs some simplification so that the benefits of moving to a formal sector outweigh the costs, both in terms of time and money. Control over the observance of the current legislation by employers and, accordingly, punishment for offenses are carried out selectively, leading to a general perception by all parties of the ineffectiveness of laws and, consequently, increasing the cases of irresponsible behavior of employers and employees.
- According to respondents, the most critical factor in informal employment is employers' reluctance to employ workers formally. In second place - the imperfection of government policy and legislation in the field of labor. Among the measures that could promote formal employment and reduce the number of unemployed without proper registration, the most popular were the creation of a simple way of legal registration for small or irregular jobs and simplification of the tax payment process, and the least popular - informing the public about the negative consequences of unregistered work for the state.

Legal problems of informal workers

- Informally employed workers reported more legal problems than those officially employed. They were much more likely to face problems such as denial of paid sick pay, denial of paid leave, denial of formalization, partial or complete non-payment of leave, and denial of maternity leave.
- Almost half of those formally and informally employed (48% in each category of respondents) tried to solve their legal problem. In most cases, the situation remained unchanged. The lack of a difference in the effectiveness of efforts to resolve their legal problems between the officially employed and the informally employed may indicate the ineffectiveness of formal procedures to protect labor rights. Among the informally employed, the problem worsens and becomes more complicated over time, although in general, this is an atypical development. The main reason for both inactions in solving existing legal problems and failure in trying to solve their legal problems was disbelief in the possibility of achieving justice and achieving change. This factor was more common among the informally employed than the officially employed.
- Among those who solved their problem in whole or in part, almost no one had money in the process. The duration of solving the problem for those who solved it in full or in part in most cases (59%) did not exceed two weeks. At the same time, the informally employed more often answered that they coped during the day, while the majority of officially employed people dealt with the issue for up to 7-14 days. For more than a month, 17% of informal and 23% formal employees solved the problem.
- Work problems of informally employed people had a more significant number of negative consequences than those of the officially employed. In particular, they were more likely to have deteriorating family relationships, health, and job loss. Moreover, attempts to defend their labor rights for informally employed people 6.5 times more often lead to job loss more often than for officially employed people.
- Problems are often resolved informally by the agreement of the parties. If among unregistered workers this method was used by 84% of those who solved their problem at least partially, then among officially employed - 64%. A small group of respondents sought legal assistance from their legal acquaintances or from governmental and non-governmental organizations that provide free legal aid. Some respondents indicated that trade union activities in the country were not effective or perceived as such at the general societal level, which could also influence citizens' choice of informal employment. If a person knows that a trade union protects them, they would rather choose a formal job. Officially employed people are much more likely to settle issues with the official consent of the parties to document the arrangements and have more opportunities to

seek help from the union. They are more inclined to recommend legal ways to solve problems: to turn to professional lawyers or the court.

- Focus group participants were unfamiliar with organizations dealing with informally employed people. However, the vast majority expressed a desire to receive information about such organizations. According to the results of focus group discussions, the most convenient sources of information were (in descending order of mention): the Internet, television, outdoor advertising, hotlines of government agencies, the application <https://diia.gov.ua/>, printed information materials. Respondents to the quantitative component of the survey would find it most convenient to receive information on opportunities to get help, advice, or counseling in solving problems related to informal employment from social networks or Internet sites, as well as mobile messengers, hotlines, television, and e-mails, but booklets and brochures in administrative institutions were the least convenient source of information.

Impact of the COVID-19 pandemic

- During the COVID-19 pandemic, the problems faced by informally employed workers persisted and even intensified: wages for low-skilled workers decreased, the number of jobs decreased, and there were no social guarantees. Among the additional challenges for the informally employed brought by the pandemic: lack of hospitalization, lack of safe working conditions, often inability to work remotely; parents find it harder to work because they have to care for children who study remotely or cannot attend preschool and school due to quarantine restrictions. The likelihood that soon, employers will deny employment to those who have not been vaccinated.
- Each respondent (both informally and formally employed) reported an average of 2 problems related to COVID-19. More than 60% of unjustified dismissals and long-term leave at one's own expense were caused by a pandemic. More than a third of denials of maternity leave, inability to use state guarantees, and deprivation of guaranteed wages are also caused by COVID-19. However, the legal problems of the officially employed show a stronger connection with COVID-19 than the problems of the informally employed. In other words, a relatively smaller proportion of problems among unregistered workers are caused by employers' response to anti-epidemic measures.

Recommendations

- Take into account the activities of production units of the informal sector (individual employees, self-employed persons who work without proper registration, household members, etc.) in the Methodological provisions for determining informal employment of the State Statistics Service of Ukraine.
- Introduce the practice of conducting regular national surveys of legal needs and problems of employees and employers and systematic monitoring of labor policy implementation.
- To form in Ukraine a unified approach in defining the meaning of the concept of "informal employment," which will take into account the categories of concepts "informal economy" and "shadow economy."
- Initiate a broad expert discussion on the need to improve the existing state policy on informal employment through the prism of protecting human rights, both officially employed and informally employed.
- Based on a common expert understanding of the concept of informal employment to form a state strategy for communication of this concept for the general public with an explanation in a simple language of all the shortcomings and consequences of this phenomenon and involving people in relevant policies.
- Development of interdepartmental and intersectoral partnerships. Involvement in solving the problems of informal employment of all parties to the social dialogue (government, employers, and workers and their associations in the form of trade unions). The government's role is critical in regulating labor relations because the very nature of these relations has such a specificity that the employee usually has less opportunity to act and influence these relations, unlike the

employer. Such interaction is possible by monitoring the population's legal needs and cooperation of government and non-government legal services providers.

- State support for legal entrepreneurship in the small and medium business sector to create economic incentives for both legal business and the use of official employment models (for example, introducing a special legal regime for the IT industry <https://city.diia.gov.ua/>: simultaneous work of the government as employees and employers).
- During formulating employment policy (especially in the relationship between the employee and the employer and the employee with the government), it is necessary to focus on human rights issues, taking into account the specifics of legal needs and problems of certain categories of workers targeted by occupation, level of economic development and potential of the territory of residence, due to the scale of the settlement, industry, and sector of the economy, as well as the age of the employee.
- During formulating employment policy, it is necessary to use information about employers' real needs and problems, the satisfaction and solution of creating a situation in which running a legal, declared business would be more profitable than working in the shadow and informal economy.
- State initiatives on legislative regulation of labor relations should be balanced, take into account all possible risks based on the results of independent research on the needs and problems of both employees and employers.
- Improving the stability and attractiveness of the formal employment sector (expanding employment opportunities in the field of formal employment, increasing wages and incomes in all areas and types of economic activity, compliance with labor laws, protection of workers' rights in formal sector enterprises).
- Stimulating the transition of employees from the informal to the formal sector, an important area is the introduction of a social insurance system, including health insurance.
- Promotion of small business (simplification of registration and licensing procedure, reduction of taxes, primarily on the salary fund, providing benefits to entrepreneurs who create additional jobs, providing financial support to small businesses employing flexible credit and tax policy).
- Introduction of preferential taxation for specific categories of workers (e.g., young people in the first place, homeworkers, people of pre-retirement age, small entrepreneurs who implement innovative approaches/technologies in their field). Additional incentives for formalizing employment for employers can be material incentives for their company, such as participation in an interest-free loan program, obtaining grants for business development.
- Improving labor legislation with a focus on regulating formal employment in small or irregular jobs, in new areas of the economy, the need for flexible work schedules, and overcoming the challenges of shifting to telework and the consequences of the COVID-19 pandemic.
- Changing public attitudes towards paying taxes, in particular awareness of responsibility for paying taxes to employers and employees.
- Introduction of accessible and effective mechanisms for resolving labor disputes through the administrative settlement procedure, engaging the State Labor Service of Ukraine and trade unions.
- Facilitate the accessibility of labor dispute resolution procedures for employees, including introducing more effective mechanisms for providing legal support to employees and improving online litigation (the possibility of resolving disputes remotely, from filing a lawsuit to a decision).
- Improving the efficiency and practical dissemination of out-of-court mechanisms (State Labor Service), including through the use of negotiated procedures and mediation.
- The development of a system of complementary safeguards against abuse of their rights and opportunities for the state, employers, and workers will help reduce the use of threats to resolve labor disputes.
- Broad involvement of the non-governmental organizations in providing legal aid and education in the field of labor rights of the government agencies responsible for implementing state policy in employment. The establishment of effective cooperation with the state system of free legal aid. It is also advisable to have information companies run by legal service providers, which help increase people's capacity to protect their rights, both on their own and with the involvement of those institutions that can help with this protection.

- Development and implementation of state programs to support employees in overcoming the negative consequences of unresolved labor problems as one of the priority areas of the State Employment Service.
- Strengthening the role of trade unions as a safeguard against job losses for employees who dare to enter into labor disputes with employers.
- Support for employment in general, the introduction of temporary measures to apply tax benefits that would allow deferred payment of taxes, provided tax rebates to small businesses that have suffered most from the adverse effects of the COVID-19 pandemic.
- Protection of workers in the workplace (strengthening work to prevent discrimination against employees), protection and prevention of workplaces to prevent or reduce the spread of infectious diseases.
- Considering the physiological and psychological needs of employees, raising their awareness, implementing occupational safety practices, investing in health care, sanitation and hygiene. Providing conditions for remote work for all who can switch to this form of work.
- Introduction of people-centered procedures for resolving legal issues related to violations of workers' rights and caused by the impact of COVID-19, in particular regarding obtaining sick leave; unjustified dismissal; safe working conditions; children's access to education; vaccination issues; access to state guarantees, in particular in the provision of maternity leave; deprivation of guaranteed wages.

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