

## ADDRESSING GENDER DISCRIMINATION IN THE WORKPLACE

In Ukrainian legislation, the concept of "gender discrimination in the workplace" is not defined. However, at the legislative level, there is a prohibition of any form of discrimination in the sphere of labour. Particularly, Article 21 of the Labour Code of Ukraine contains the following provision:

*"any discrimination in the sphere of labour is prohibited, including the violation of the principle of equal rights and opportunities, direct or indirect restriction of the rights of employees **based on sex, gender identity, sexual orientation.**"*

The International Trade Union Confederation identifies six main forms of gender-based violence in the workplace. Although not all of these forms of gender-based violence in the workplace are directly defined in Ukrainian legislation, such actions may be qualified under certain norms of the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine, and therefore, the offender may be prosecuted:

<p><b>The main forms of gender-based violence in the workplace, as identified by the International Trade Union Confederation</b></p>	<p><b>Responsibility provided in Ukrainian legislation:</b></p> <ul style="list-style-type: none"> <li>• <b>Code of Ukraine on Administrative Offenses</b></li> <li>• <b>Criminal Code of Ukraine</b></li> </ul>
<p>Verbal abuse</p>	<p><b>Administrative liability</b> under Article 173 of the Code of Ukraine on Administrative Offenses for "Petty Hooliganism".</p> <p>Punishment is provided in the form of a fine ranging from 51 UAH to 119 UAH, or community service for a period of 40 to 60 hours, or correctional labour for a period of 1 to 2 months with a deduction of 20% of earnings, or administrative detention for up to 15 days.</p> <p><b>Important!</b> Punishment under this article may occur if obscene language is used in a public place.</p>
<p>Humiliation</p>	<p>Humiliation in the workplace is classified by Ukrainian legislation as committing mobbing, for which <b>administrative liability</b> is provided under Article 173-5 of the Code of Ukraine on Administrative Offenses for "Mobbing (bullying) of an employee".</p> <p>The punishment for individuals is provided in the form of a fine ranging from 850 UAH to 1,700 UAH or community service for a period of 20 to 30 hours. In the case of such a violation committed by a public official or a individual entrepreneur, who utilizes the labour of hired individuals, the liability will be in the form of a fine ranging from 1,700 UAH to 3,400 UAH or community service for a period of 30 to 40 hours.</p> <p>In the event of such a violation committed by a group of individuals or by a person who has already been held administratively liable under this article, the liability will be stipulated under part 2 of this article.</p>

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<p>Bullying</p>	<p>Ukrainian legislation defines bullying as actions of <b>participants in the educational process</b> involving psychological, physical, economic, or sexual violence, including the use of electronic communication tools, directed towards a minor or underage individual, or by such individual towards other participants in the educational process, resulting in or potentially resulting in harm to the mental or physical health of the survivor.</p> <p><b>For committing bullying an administrative liability is provided</b> under Article 1734 of the Code of Ukraine on Administrative Offenses for "Bullying of a participant in the educational process."</p> <p>The liability is provided in the form of a fine ranging from 850 to 1700 UAH or community service for a period of 20 to 40 hours.</p>
<p>Intimidation</p>	<p><b>It may be classified as a criminal offense</b> under Article 129 of the Criminal Code of Ukraine for "Threat of Murder," which carries a penalty of arrest for up to 6 months or imprisonment for up to 2 years.</p>
<p>Stalking</p>	<p>In Ukrainian legislation, there is no legal definition of the phenomenon of stalking, but its commission may constitute elements of a criminal offense under Article 182 of the Criminal Code of Ukraine for "Violation of the inviolability of private life."</p> <p>The liability for committing such an offense is provided in the form of a fine ranging from 8,500 to 17,000 UAH or correctional labour for up to 2 years, or arrest for up to 6 months or imprisonment for up to 3 years.</p>
<p>Online attacks</p>	<p>As of today, the legal definition of online attacks is absent in Ukrainian legislation.</p> <p>The Istanbul Convention defines violence against women to include all acts of violence against women on the basis of gender, including those occurring online. Therefore, there is a need to review methods of violence perpetrated in the digital environment and criminalize relevant manifestations of danger to women in Ukraine.</p> <p>The process of bringing domestic legislation in line with the requirements of the Istanbul Convention, arising from the obligations associated with its ratification by Ukraine, should include the criminalization in national legislation of such unlawful behaviour as:</p>

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Online attacks	<ul style="list-style-type: none"> <li>• psychological violence (Article 33 of the Istanbul Convention)</li> <li>• online stalking or stalking committed in the digital sphere (Article 34 of the Istanbul Convention)</li> <li>• sexual harassment online or through digital means (Article 40 of the Istanbul Convention).</li> </ul> <p><u>Ukrainian legislation contains provisions under which digital violence may be partially classified as follows (but not exclusively):</u></p> <ul style="list-style-type: none"> <li>- domestic violence (Article 126-1 of the Criminal Code of Ukraine)</li> <li>- threats of murder (Article 129 of the Criminal Code of Ukraine)</li> <li>- sexual violence (Article 153 of the Criminal Code of Ukraine)</li> <li>- violation of equality of citizens based on their racial, national, regional origin, religious beliefs, disability, and other grounds (Article 161 of the Criminal Code of Ukraine)</li> <li>- violation of the secrecy of correspondence, telephone conversations, telegraph or other correspondence transmitted by means of communication or through a computer (Article 163 of the Criminal Code of Ukraine)</li> <li>- violation of the inviolability of private life (Article 182 of the Criminal Code of Ukraine)</li> <li>- committing domestic violence, violence based on gender (Article 173-2 of the Code of Ukraine on Administrative Offenses)</li> <li>- mobbing (Article 173-5 of the Code of Ukraine on Administrative Offenses).</li> </ul>

Furthermore, the commission of these forms of violence in the workplace may exhibit signs of mobbing, for which responsibility is provided in Ukraine. More details about this can be found in [Labor Code No. 2, Topic: Employment].

In international law, the key act that implements policies to address gender discrimination in the workplace is the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**:

“*Discrimination in the workplace can occur not only based on gender but also manifest in any differentiation, exclusion, or preference made based on race, skin colour, sex, religion, political opinion, national or social origin, which results in the destruction or infringement of equality of opportunity or treatment in the field of employment and occupation.*”



**At the same time, the Convention establishes that any distinction, exclusion, or preference regarding a particular job, based on its inherent requirements, shall not be considered discrimination.**

Ukrainian legislation ensures that women and men are provided with equal rights and opportunities in employment, career advancement, skills upgrading, retraining, and entrepreneurial activities.

**For this purpose, the employer is obliged to:**

- ✓ create working conditions that allow women and men to engage in work on an equal basis;
- ✓ provide women and men with the opportunity to combine work with family responsibilities;
- ✓ ensure equal pay for equal work for women and men with the same qualifications and under the same working conditions;
- ✓ take measures to create safe working conditions for life and health;
- ✓ take measures to prevent and protect against cases of sexual harassment and other manifestations of violence based on gender.

In this context, Ukraine has two special laws: the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" and the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men."

Both provide an identical definition of the concept of affirmative action:

“*special temporary measures that have legitimate, objectively justified goals, aimed at eliminating legal or factual inequality in opportunities for individuals and/or groups to exercise their rights and freedoms on equal grounds as provided by the Constitution and laws of Ukraine*”

Therefore, **it is not considered discrimination based on gender** ((so-called positive discrimination) when preferences and privileges are provided to groups of individuals with more vulnerable "starting points," for example, due to social or historical circumstances):

- special protection for women during pregnancy, childbirth, and breastfeeding;
- mandatory military service for men, as provided by law;
- difference in retirement age for women and men, as provided by law;
- special requirements for women's and men's labour protection related to the protection of their reproductive health.

**IMPORTANT!**

Restrictions on the rights of employees that depend on specific job requirements (regarding age, education, health status, gender) or are conditioned by the necessity of enhanced social and legal protection of certain categories of individuals are not considered discrimination in the field of labour.

**A person who has become a victim of gender-based discrimination in the workplace can file a complaint with:**

- ✓ **state authorities, including the State Labour Service of Ukraine, authorities of the Autonomous Republic of Crimea;**
- ✓ **local self-government bodies and their officials;**
- ✓ **the Commissioner of the Verkhovna Rada of Ukraine for Human Rights;**
- ✓ **court;**
- ✓ **The UN Committee on the Elimination of Discrimination against Women** (in case internal legal remedies have been exhausted or if the application of such remedies is unduly prolonged).

**The victim has the right to compensation for material damages and moral damage** caused to him as a result of gender discrimination. Moral damage is compensated regardless of material damages that are subject to compensation, and is not related to their size.

### **IMPORTANT!**

An employee may demand temporary remote work, for a period of up to 2 months, from the employer if actions containing signs of discrimination were committed against them in the workplace. However, the employer may refuse the employee's request for such transfer if remote work is impossible considering the employee's job function, and if the employee has not provided evidence confirming that discrimination, sexual harassment, or other forms of violence have occurred (Article 602 of the Labour Code of Ukraine).

Also, in Ukraine, exists a State Strategy for Ensuring Equal Rights and Opportunities for Women and Men for the period up to 2030 (approved by the Cabinet of Ministers of Ukraine in August 2022 to implement the Sustainable Development Goals of Ukraine until 2030).

It's a comprehensive strategic document that defines priority directions for consolidated actions of central and local executive authorities, local self-government bodies, civil society institutions, and business entities to reduce gender inequality in all spheres of societal life.

### **The strategy focuses on four strategic goals:**

- 1** Effective and coordinated functioning of the national mechanism for ensuring equal rights and opportunities for women and men, which will create a basis for addressing the needs of various groups of women and men in decision-making across all sectors and at all levels.
- 2** Effective counteraction to all forms of violence, including those related to conflict.
- 3** Ensuring equal rights and opportunities for women and men in human development areas such as education, healthcare, social protection, culture, sports, and more.
- 4** Ensuring equal participation of women and men in various spheres of economic activity to create a foundation for mitigating processes of poverty growth among the population associated with the war in Ukraine.

Since 2020, Ukraine has had the National Social Service of Ukraine. It is a central executive authority responsible for implementing state policy in the field of social protection of the population, including issues related to ensuring equal rights and opportunities for women and men.

### **The National Social Service of Ukraine performs three main functions:**

- implementation of policies, social protection of the population, and protection of children's rights;
- exercising the state control during the provision of social support and protection of children's rights.
- methodological support and coordination of actions between government authorities and local self-government bodies regarding ensuring children's rights, conducting social work, providing basic social services, and social support according to the needs of residents of territorial communities.

The National Social Service of Ukraine operates at both national and local levels (at the level of regions and the city of Kyiv).

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