

# **IMPROVEMENT OF THE UKRAINIAN LABOR LEGISLATION CONCERNING THE HIRED WORKERS' EMPLOYMENT PROTECTION IN THE CONTEXT OF EUROPEAN INTEGRATION: ECONOMIC AND LEGAL ASPECT**

An article is prepared in the frames of the project for the young scientists of Ukraine of 2017 (project ID 96737) "Improvement of the Legislation of Ukraine as to the Provision of the Protection of the Banking in the Conditions of European Integration: Economic and Legal Aspect"

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*The article studies current practice of Ukraine's labor legislation regarding the hired workers' recruitment. It is revealed that nowadays in Ukraine there are a percentage of employers who engaged in recruitment fraud. A hired worker is not employed in the way prescribed by the employment labor legislation.*

*The methodical approach of employing a hired worker in Ukraine is proposed by adjusting the employee's salary tax scheme. The application of this methodology will enable all hired workers to be sure that they are really officially employed at a particular enterprise, have work experience, social guarantees, receive their own gross salaries, etc. In turn, the employer will not feel guilty before the employee that the amount of salaries is significantly lower than that which was defined in the employment contract. The proposed approach will enable the controlling authorities of Ukraine to reduce the percentage of planned and unscheduled inspections of functioning enterprises.*

*Keywords: labor legislation, employee, employment, gross salary, criminal responsibility.*

Today's Ukrainian labor relations are reduced to the fact that owners of enterprises with the inherent trait of mobility are aware that there is a direct link between a skilled worker, a method of recruiting such a hired employee and the consequences of labor laws' violations in the country. Moreover, to make the staff's rational selection and its placement in the organization, managers of domestic enterprises understand that the availability and possession of existing techniques is only 50% of success. The rest of the 50% remains on the present and the adaptability of such techniques to the existing business and legislative environmental requirements. So the question arises: how professionally and at the same time legally to form the enterprises' staff, which criteria are appropriate to pay attention to, how to distinguish between substituting concepts of a skilled and informed employee in a certain area, and, at the same time, have a legal labor relationship. Taking into account above mentioned information, we can say that the chosen topic research is urgent and relevant.

The study of the issue of hired workers' recruitment, the hidden labor relations deals with the works of such Ukrainian as well as foreign scientists and practitioners: A. Broeck (2016), M. Chorna (2013), D. Ferris (2016), S. Illiashenko (2016), I. Petrova (2014), N. Voronaya (2017) etc. But today, the practical experience of the European Union countries pushes us to the following statement: any assumptions and researches by both academics and practitioners require a thorough rethinking and adaptation to a modern business environment that will have only a legislative basis.

Investigating the issue of recruiting at a particular position in the enterprise, the vast majority of scientists talk about a certain sequence or the so-called algorithm, that should be adhered to managers, HR managers or recruiting enterprises. In particular, such scientists as O. B. Danchenko (2013), V. O. Zanora (2013), Y. M. Kuzminskaya (2013)<sup>1</sup>, M. V. Chorna (2013), M. M. Bilonozhko (2013)<sup>2</sup>, A. V. Sogrina (2010), T. M. Chernova (2010)<sup>3</sup>, after thoroughly analyzing the scientific works of domestic scientists that are focusing on the issue of recruitment, concluded that there is currently no clear understanding of how the recruitment procedure for Ukrainian enterprises should be looked at in order to avoid the influence of selecting subjectivity. And we agree with the opinion of these scholars, because, as a rule, in the writings of domestic scientists of scientific and practical character, it's mention only well-known methods of employees' recruiting, and the procedure for their selection in the generally accepted form is mentioned. And only 5% of works contain a description of formalized methods.

Thus, according to the generally accepted algorithm for employees' recruiting for a vacant position, we can say that recruitment experts check each candidate for compliance only to ensure that their chosen candidate is perfect in accordance with paper formalities, but as it turns out - this person is unpleasant in society. However, the practice proves that vacancy announcements with long lists of skills are meaningless. A person who fully meets the

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<sup>1</sup> Zanora V. O. and others. (2013). Methodology of Staff Selection Taking into Account Organizational Risks. *Upravlinnya Proektamy ta Rozvytok Vyrobnystva (Project Management and Production Development): Zb.nauk.pr., Luhans'k: vyd-vo SNU im. V.Dalya*, 1(45), 88–94 (in Ukr.).

<sup>22</sup> Chorna M. V. and others. (2013). Selection of Staff at the Enterprise: System and Process Approaches. *Ekonomichna Stratehiya i Perspektyvy Rozvytku Sfery Torhivli ta Posluh (Economic Strategy and Prospects for the Development of Trade and Services)*, 1(2), 69–76 (in Ukr.).

<sup>3</sup> Sohryna A. V. and others. (2010). Features of Modern Non-traditional Methods of Staff Selection. *Vestnyk Volhohradskoho Hosudarstvennoho Unyversyteta (Bulletin of the Volgograd State University). Seryya 9: Yssledovanyya molodykh uchenykh.*, 8(2), 84–89 (in Rus.).

requirements can be a terrible employee, and vice versa – a person who meets the requirements of only 20% will be able to perfectly perform the tasks. Moreover, according to the studies conducted by Harvard psychologists, it is established: success in career growth by 85% does not depend on the level of a person's professional training, but on its individual qualities. The question arises: why do employers seek to establish a huge list of requirements for hired workers? Why not just do interviews, during which one can provide a situational task in the field of vacancies? During the interview, an attentive listener, in particular a recruiting specialist, can find out a lot of interesting information concerning the previous projects of the applicant's position.

An interesting approach is the recruitment of hired workers, when the candidate may be a talented marketing specialist, but if the name of his or her position never mentioned the word "marketing", the HR manager will never know if you do not talk to him. That is why the process of recruiting should not be limited to thoughtless matching searches. Moreover, clever employees are quick to get acquainted with new tools. So, if the company needs good employees, it is advisable to eliminate the usual methods of interviewing and not to select a resume using keyword search.

According to our research in the enterprises of certain regions of the Northeast Region of Ukraine, five main reasons have been identified, according to which it is not appropriate to hire workers, even if they ideally meet the requirements of the list that was put forward for applicants for a vacant position (Fig. 1).

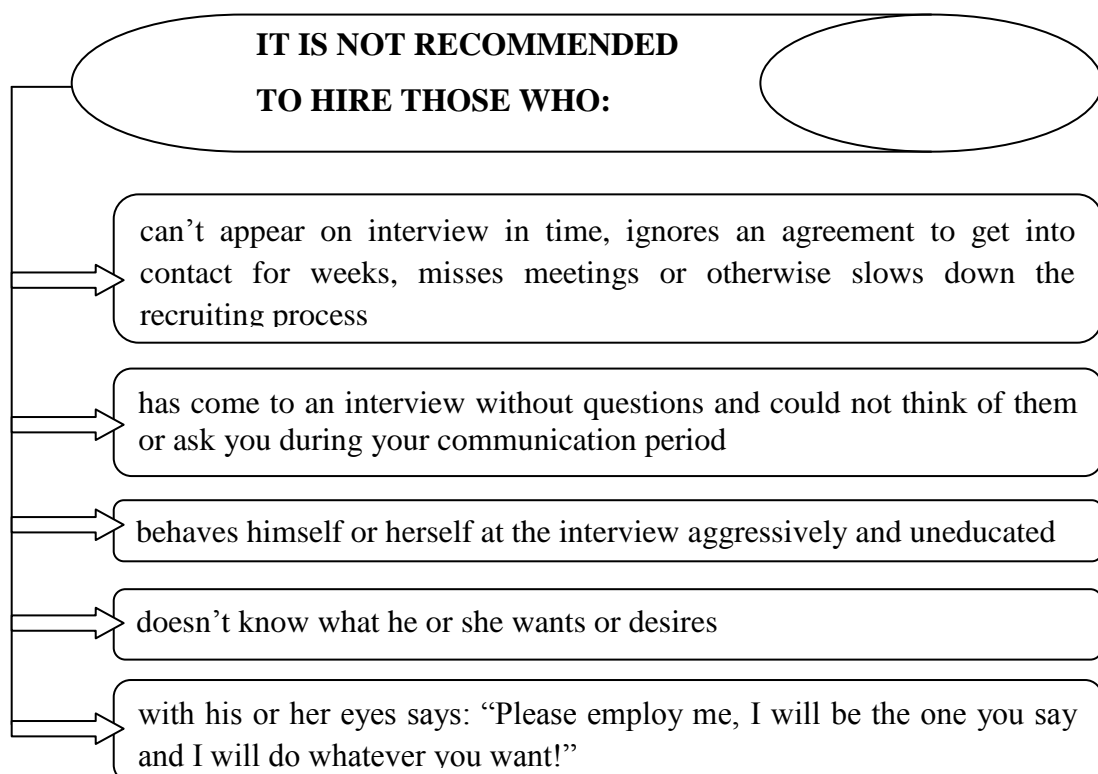


Fig. 1. The Main Reasons for Employee's refusing to Employ for a Vacant Position

*Source: own author's research, based on an expert survey conducted in 2017 at the workshops "Underwater Stones" in entrepreneurial business" (295 respondents were interviewed: managers, HR managers, recruiter of the enterprises of Sumy, Kharkiv and Poltava regions).*

The reasons we have determined obligatory have basis. For example, if the person for weeks ignores to contact you, it means that he or she has got other offers. And why one should employ a person who will always strive to work at the another enterprise?

Speaking about the discourtesy, we do not mean inconvenient situations that can happen to everyone. These are the applicants who come to the interview and behave themselves provocatively. Recruiters, HR managers can interpret this situation as follows: in the previous work this person was treated unfair, therefore, the Article 23 of the Universal Declaration of Human Rights was violated.<sup>4</sup>

Thus, in accordance with the Article 23, paragraph 1, of the Universal Declaration of Human Rights, everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. So is it appropriate to employ such a worker and treat him or her better than the previous employer, and do you really believe that the applicant will appreciate it? As stated by 84% of respondents interviewed, after three or four months, such an employee will be fired, and other members of the team for a long time will be forced to overcome the stress caused by his or her presence. We believe that if the applicant for a vacant position is aggressive at the initial stage of the recruiting process, he or she does not have to be employed, even if he or she possesses exceptional technical abilities. The main resource of the employer is a team; you can't allow anyone to destroy it. There is a dilemma that violates the human right to work or the right of a team to a comfortable existence?

Taking into account the results of our research at the workshops "Underwater Stones" in entrepreneurial business", and considering the opinion of young business leaders (aged category under 38), we believe that today it is becoming increasingly urgent to monitor the issue of hidden labor relations as Ukrainian youth, and elderly people.

As we noted in previous publications<sup>5</sup>, as a rule, speaking about real employment of the country, the vast majority of scientists begin with problems at the macro level, in

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<sup>4</sup> Universal Declaration of Human Rights (10 December, 1948). *United Nations*, Retrieved from: <http://www.un.org/en/universal-declaration-human-rights/> (in Eng.).

<sup>5</sup> .Klietsova N. and others. (2017). Employment Policy in the Context of European Integration of Ukraine. *Finance and Management, Journal of the Faculty of Economic Sciences University of Warmia and Mazury in Olsztyn*, 2 (1), 41–49 (in Eng.).

particular, processes that impede the stable development of the state as a whole. And only a few scientists are immediately looking for trouble in the employment policy at the micro level. These are the motivational policy of enterprises or the so-called “energy forces”,<sup>67</sup> which initiate the employees’ behavior at their position. It is from these “energetic forces” will depend the period of the staff’s efficiency at the enterprise, directions of further professional development. As a result – for enterprises, this approach ensures the welfare and prosperity of national as well as international levels. But we can only agree or criticize, taking into consideration the current trends of enterprises in various industries and ownership. So, the urgent question is the employment intensification of persons who have reached working age, the reorientation of the working population to those organizations that provide decent working conditions while maintaining domestic production in the context of European integration of Ukraine.

So, having employed the necessary employee for a vacant position, there is a question regarding the registration of legal labor relations with this worker. It is here that you need to take into account a number of cases, in particular, it is about: the statutory guarantees and restrictions on recruitment, the rules for setting the probationary period, the peculiarities of hiring foreigners and stateless persons. And the most importantly – it is necessary to strictly observe the procedures for concluding an employment contract with a newly hired employee.<sup>8</sup>

It should be emphasized that, even in spite of the Strategy for the Development of Small and Medium-Sized Entrepreneurship in Ukraine for the period up to 2020,<sup>9</sup> in early 2017, there was the percentage of Ukrainian employers engaged in recruitment fraud. Or use the so-called shadow labor. So, for today, informal employment covers a significant number of jobs at the enterprises of the formal and informal sector of the economy (the ratio is 2, 25 to 1). On the one hand, the distribution of this type of employment among each category of citizens has certain objective reasons, such as: search for extra earnings during the educational

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<sup>6</sup> Broeck A. A. and others. (July, 2016). Review of Self-Determination Theory’s Basic Psychological Needs at Work. *Journal of Management*, 42(5), 1195–1229 (in Eng.).

<sup>7</sup> Illiashenko S. (April, 2016). Knowledge as a Factor of Competitive Advantages: Prospects for Ukraine. *Economic Annals-XXI*. 156 (1-2), 49–53 (in Eng.).

<sup>88</sup> Voronaya N. and others. (February, 2017). Hiring a job. *Podatky ta Bukhhalters'kyy Oblik (Taxes and Accounting)*, 16, 1–7, Retrieved from: <https://i.factor.ua/ukr/journals/nibu/2017/february/issue-16/article-25329.html> (in Ukr.).

<sup>9</sup> On Approval of the Strategy for the Development of Small and Medium Enterprises in Ukraine until 2020. (24. 05. 2017 ). *Rozporyadzhennya Kabinetu Ministriv Ukrayiny “Pro skhvalennya Stratehiyi rozvytku maloho i seredn'oho pidpryyemnytstva v Ukrayini na period do 2020 roku (Order of the Cabinet of Ministers of Ukraine "On Approval of the Strategy for the Development of Small and Medium Enterprises in Ukraine for the period up to 2020")*, 504-p., Retrieved from: [http://search.ligazakon.ua/1\\_doc2.nsf/link1/KR170504.html](http://search.ligazakon.ua/1_doc2.nsf/link1/KR170504.html) (in Ukr.).

period, the desire to continue labor activity as a salvation from the growing poverty level for people over the working age, the possibility for a certain period of time to receive income higher than social benefits for unemployment, etc. Moreover, we can say that participation in hidden labor relations, on the one hand, gives the opportunity to preserve the labor potential of the country to some extent, contributing to the solution of the problem of income and even the elemental survival of a certain percentage of the population. However, on the other hand – it is necessarily draws a lot of resources and efforts to conceal both the most shadow economic activity and its results, generates additional expenses of business entities, losses of mandatory tax revenues, violations of labor legislation. It is the dissemination of hidden labor relations and the practice of shadow salaries that leads to a significant lack of income from the pension fund, leads to a reduction in production, provokes a high level of poverty of the working population and a significant percentage of the taxation of legal business, as well as low compliance with the established laws in Ukraine.

Consider a situation where a hired employee successfully interviewed and was notified about employment in the company. To his or her opinion, human rights were not violated. At the same time, we emphasize that since January 1, 2015, the Article 241,<sup>10</sup> which requires registration in the employment service of an employment contract concluded between an entrepreneur and an employee. However, being aware of this issue, the employee should know that at the same time there was another requirement. Thus, in part 3 of the Article 24 of the Labor Code amended, according to which an employee can't be admitted to work without the conclusion of an employment contract, drawn up by an employer's order, and the notification of the relevant authorities on the admission of an employee to work. According to the current legislation, such a notice on the acceptance of an employee for a job should be filed by the owner of the enterprise, institution, organization or authorized body (person) or individual to the territorial bodies of the State Fiscal Service at the place of their registration as a payer of the Single Social Contribution (SSC) before the new employee starts to work. We would like to emphasize that such a notice must be submitted at the time of recruitment of each new employee.

Thus, in accordance with the labor legislation of Ukraine, a hired employee can be admitted to work if there were three main events that are depicted in Fig. 2.

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<sup>10</sup> Labor Code of Ukraine. (10.12.1971). *Zatverdzhenny Zakonom (Approved by the Law) #322-VIII (Z Podal'shymy Zminamy, Vnesenymy z'hidno z Ukazamy Prezydiyi VR Ukrayins'koyi RSR, Zakonamy Ukrayins'koyi RSR i Zakonamy Ukrayiny)*, Retrieved from: <http://zakon4.rada.gov.ua/laws/show/322-08> (in Ukr.).

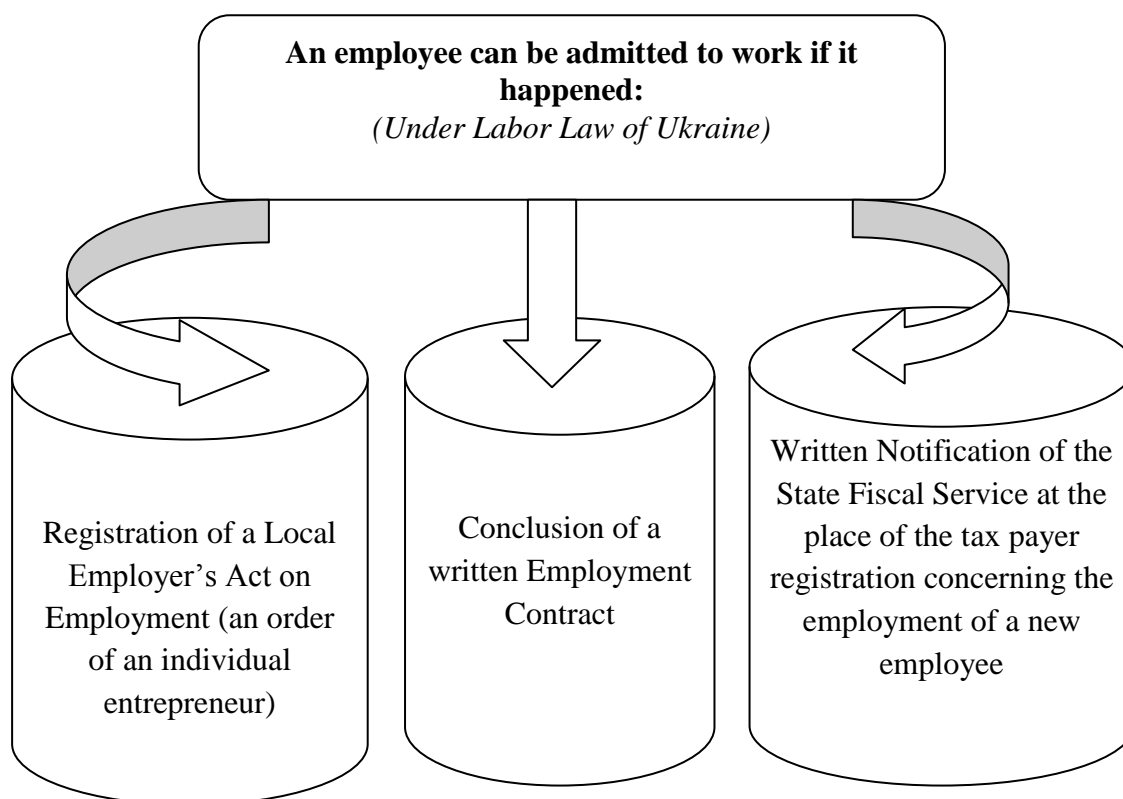


Fig. 2. The Main three Events Under which there is no Hidden Labor Relations

*Source: prepared by the author in accordance with the Labor Legislation of Ukraine*

We are investigated, if there is a hidden labor relations, the above indicated events in Fig. 2 do not occur. However, there is a situation where an employee believes that he or she is officially employed in an enterprise, but in fact – he or she is not hired in the manner prescribed by the law of employment. And only when the inspection of the employer begins with the supervisory/fiscal bodies of labor the hidden labor relations can be revealed.

We have found out two main reasons that make the Ukrainian employers to violate consciously the legally established procedure of the employment process. Among them: too high taxes on accrual and deduction from the employee's salary, which contributes to the continuous development of hidden labor relations. We can also define the unpredictable losses in the activity of the enterprise as a result of the unprofessional incapacity of the employee on the occupied position.

An optimal solution to this problem is the adjustment of the employee's salary tax scheme. So today, domestic workers receive net salaries, they constantly underline their dissatisfaction with the fact that the really of payment doesn't meet the promised salaries in the employment contract. In order the employees were satisfied with the level of their own income and aware of the employer's importance, we propose the employees of the enterprise were the vary objects who have to pay the deduction from their salaries (Fig. 3). It should be

noted that, in accordance with the existing tax legislation of Ukraine, salary deduction should be understood as taxes which are deducted from the amount of income paid to an employee, but their transfer to the corresponding budgets is an employer's obligation.

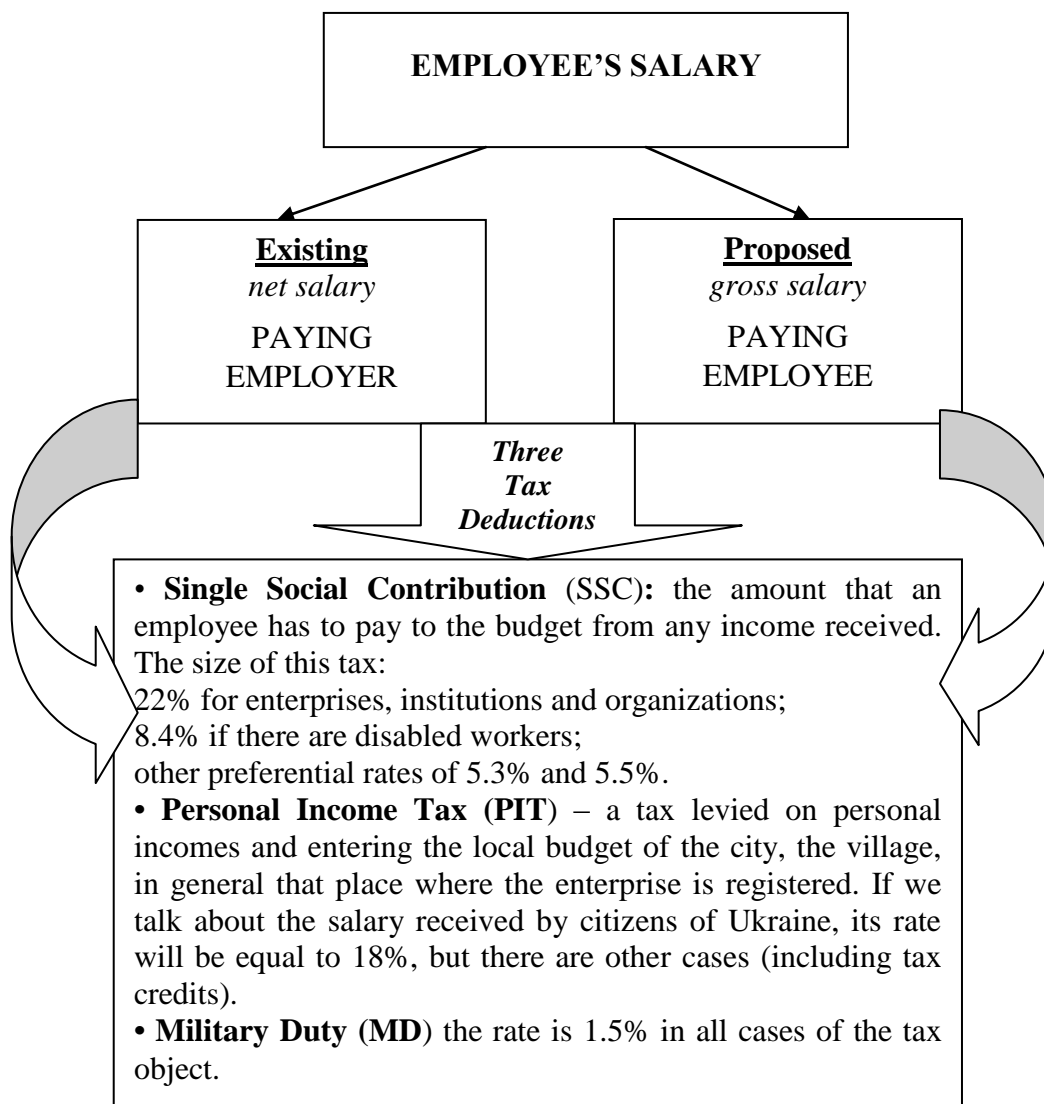


Fig. 3. Methodological Approach to Calculating Net and Gross Salaries of an Employee

*Source: own author's suggestions*

Consequently, taking into account the above mentioned calculations, it is necessary to amend Chapter V and Division 10 of Chapter XX of the Tax Code of Ukraine of December 2, 2010, # 2755-VI <sup>11</sup> and the Law of Ukraine # 2464-VI of July 8, 2010 “On Collection and Accounting of Single Fee on Obligatory National Social Insurance”. <sup>12</sup>

<sup>11</sup> Tax Code of Ukraine. (02.12.2010). *Zatverdzhenny Zakonom # 2755-VI (Approved by Law No. 2755-VI)*, Retrieved from: <http://zakon4.rada.gov.ua/laws/show/2755-17> (in Ukr.).

<sup>12</sup> On the Collection and Registration of a Single Contribution to the Compulsory State Social Insurance. (08.07.2010). *Zatverdzhenny Zakonom # 2464-VI (Approved by Law No. 2464-VI)*, Retrieved from: <http://zakon3.rada.gov.ua/laws/show/2464-17> (in Ukr.).



Along with the mentioned, another criterion that inhibits the process of a significant reduction in the percentage of hidden labor relations. It's the absence in the Ukrainian legislation the employers' criminal liability for the illegal usage of employees. Indeed, in accordance with the Criminal Code of Ukraine, an employer can have criminally liability in cases:

- for the unlawful dismissal of an employee from work on personal motives (Paragraphs 1 and 2, Article 172 of the Criminal Code of Ukraine)<sup>13</sup>;
- for gross violation of the labor agreement by deception or abuse of trust or coercion to perform work that is not stipulated by the agreement (Paragraph 1 Article 173 of the Criminal Code of Ukraine);
- gross violation of the labor agreement by deception or abuse of trust or compulsion to perform work not stipulated by the agreement committed against a citizen with whom a contract for work has been concluded outside of Ukraine (Paragraph 2, Article 173 of the Criminal Code of Ukraine);
- unjustified non-payment of salary during more than one calendar month, committed intentionally by the head of the enterprise or a private entrepreneur (Paragraph 1 of Article 175 of the Criminal Code of Ukraine) or if such non-payment was the result of misuse of funds allocated for these purposes (Paragraph 2 Article 175 of the Criminal Code of Ukraine).

However, as we see, none of the above mentioned positions is aimed at the application of criminal liability for hidden labor relations. The maximum that may occur is a fine from one to thirty times of the minimum salaries, which is determined by the Law of Ukraine at the time of detection of the violation. In this case, the fine is imposed for each employee concerning to whom was committed the violation. And this suggests that employers will continue to violate the norms of labor legislation. Therefore, it is necessary to harmonize labor laws of Ukraine regarding the issue of hidden labor relations in the legislation of European countries. There are two ways. The first one is to apply more severe penalties, the second one to instill a loyal way of legitimizing labor relations.

Taking into account that the level of minimum salaries in Ukraine is much lower than the level of salaries in Europe, we believe that the UK law may be an essential example. The uniqueness of this country lies in the absence of any systematic measures aimed at preventing employers from fleeing responsibility through the use of split employment. So, based on a formal criterion, the British courts believe that even if the company controls the work of a

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<sup>13</sup> Criminal Codex of Ukraine. (05.04.2001). *Zatverdzhenny Zakonom # 2341-III (Approved by Law No. 2341-III)*, Retrieved from: <http://zakon3.rada.gov.ua/laws/show/2341-14> (in Ukr.).

person (gives him or her a task, accepts them, sets times of work and rest, monitors the discipline, etc.), this does not mean that this person is employee of the company. As a sign of labor relations can only be considered an employment contract (even oral).

Also, remains open the question concerning the provement of really labor, and not the existence of civil-law relations. In Ukraine appears the necessity to define, at the legislative level, the criteria for the qualification of relations as labor. Paradoxically, but this question is interpreted exclusively by the controlling or fiscal authorities.

Therefore, the current practice of Ukraine's labor legislation regarding the recruitment of hired workers should be of great relevance, as it is an integral part of current economic and political reforms in Ukraine. This issue is particularly problematic in the context of the European aspirations of Ukraine and the process of adaptation of the legislation of European countries to our one. So, let's take into account the European Employment Strategy,<sup>14</sup> which can be considered as an outstanding achievement of all European countries in the political as well as economic and social spheres, and could, at a first glance, be applied in Ukraine. Moreover, within the framework of this strategy it would be possible to deduce certain positive points for employers. In particular, we are talking about a policy of creating new places in enterprises of a certain profile. The main tools of this policy are: grants, full or partial reimbursement of costs for training or retraining of the staff company, free assistance in recruiting employees and other benefits provided by EU structural funds and local authorities.

In particular, if we take into account Hungarian tax law, it would be relevant to apply a similar approach to Ukraine. Thus, according to the requirements of the European Employment Strategy, it has been established that there is no requirement for the minimum amount of investment required to create new jobs. So, for example, if the number of employees in Budapest or Western Hungary is increased by 300 employees or 150 employees in less developed regions and only 20 employees in the 48 least developed regions, the state provides such enterprises with a tax benefit of 80%. In addition, 20% of newly recruited workers should be recent graduates of higher education institutions. At the same time, all enterprises that receive tax benefits from the state must comply with these two requirements during a five-year period starting from the third tax year after the tax deduction for the first time has been used for the first time.

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<sup>14</sup>Petrova I. (May, 2014). Social Consequences of European Integration of Ukraine. *The labour market*, Retrieved from: <http://library.fes.de/pdf-files/bueros/ukraine/10770.pdf> (in Eng.).

For individual Ukrainian enterprises, it would be urgent to apply Croatian practice of a one-time grant, which amounts to 15,000 crowns for future worker. The only condition for an employer is not to reduce the minimum number of employees within three years. Also, for the development of training activities, the Croatian state compensates employers for up to 50% of the costs incurred in this type of activities.

Also, it would be successful to apply in Ukraine the practice developed by the EU countries such as Germany and France, concerning the ensuring of social guarantees against unemployment. Thus, according to the principle of solidarity, all working Ukrainian citizens would have the right to social protection and payment (in the amount, correspondingly, in relation to their previous income) in the case of unemployment until the time of acceptance of this employee to a new place of work. This would be the result of guaranteeing social risks for the able-bodied population of Ukraine, which not only wants to work, but indeed does make some efforts.

Thus, in the process of our research, we came to the following conclusions. Firstly, in order to reduce the number of cases concerning the violation of the employment process in the sphere of Ukrainian labor legislation, there should be an open dialogue with employees and enterprises or entrepreneurs, which will enable the employment policy of Ukraine to be transparent, accordingly, will reduce the percentage of hidden relations.

Secondly, there should be a change in the taxation of employee's salary. In particular, it was proposed that deductions from the employees' salaries were paid by the workers. This will give them the opportunity to receive the gross salary.

Thirdly, the proposed methodological approach concerning the employing of an employee in Ukraine by adjusting the salary tax scheme of an employee will enable the employer not to feel guilty against a hired worker. It is a question of the salary's size, which is significantly lower than that which was discussed at the initial interview with an employee and fixed in an employment contract.

Fourthly, the proposed approach will enable the controlling/fiscal authorities of Ukraine to reduce the percentage of planned and unscheduled inspections of functioning Ukrainian enterprises concerning the hidden labor relations.

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