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**Languages:** Ukrainian, English, German,  
Polish, Italian, Russian

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To: Memorandum

**Project:** MEMORANDUM on the rights of an employee (our client) for the notice period compensation and compensation for unused annual vacation

**Client:** (Confidential information)

This memorandum outlines key legal considerations regarding the termination of a transnational freelance contract and the resulting dispute resolution, including notice periods, unpaid vacation compensation, and negotiated settlements. The case involved a highly qualified contractor ("the Client") who provided services to a digital services company ("the Company") registered and acting under different legal jurisdiction.

Following the early termination of the engagement by the Company, the Client faced challenges in receiving fair compensation for unused vacation time and insufficient notice.

After initial legal correspondence, both parties opted for a negotiated settlement, avoiding litigation. The document provides legal analysis and practical insights for lawyers working with international clients in similar contract disputes, especially where labor protections are minimal or unclear due to independent contractor status and cross-border legal complexities.

All personal data and identifying details have been anonymized. The memorandum is presented with the Client's consent for publication for professional reference purposes.

## Case details:

Based on the documents provided and the circumstances of the situation, the following is a legal analysis of Client's right to payment for the notice period and to receive monetary compensation for unused annual leave days.

Client worked for Company Inc. (registered in **the USA, California** and with the Head Office in **Ukraine**) as a Software Engineer under a contract concluded on January, 2025. According to the terms of the contract, the work was performed in a full-time, remote, flexible schedule format. The employee physically performed her duties mainly from the territory of **Armenia**, where the client is also a tax resident.

The Client was notified of the termination of cooperation on June, 2025. According to the company's rules, set out in the onboarding documents, the established notice period is 10 working days in case of dismissal during the probationary period at the initiative of the employee, and one calendar month in case of termination of cooperation after its completion.

It follows from the context that the termination was not initiated by the employee, but by the company.

Since the Client started work on January, 2025, and the probationary period was 3 months, it ended at the end of April. Therefore, at the time of the notice on June, the Client was already in the status of a full-time employee, and accordingly is entitled to a full one calendar month notice period - that is, until July 30, 2025 inclusive.

However, instead of paying for this period, the company offered to count the unused annual leave days (8.5 days) as a notice period. The public holiday was also taken into account.

From a legal point of view, this practice raises doubts about its compliance with labor legislation, since compensation for unused vacation and payment for the notice period are different labor obligations.

## Calculation of the notice period and the amount of due payments

According to the terms of the contract and the company's onboarding policy, in case of termination of cooperation after the end of the probationary period, the employee is entitled to a full one calendar months' notice. Since the Client passed the probationary period in April, the notice of termination of cooperation on June 30 means that the last day of work should be July 30, 2025 inclusive.

In addition, as of the time of termination of the employment relationship, the Client had 8.5 days of unused annual paid leave.

The total amount of payments due should include:

- payment of wages for the period June 30 - July 30, 2025 (notice period),
- monetary compensation for 8.5 days of unused vacation.

## **Explanation regarding attempting to credit vacation time during the notice period**

This is a situation where, instead of paying the employee full salary for 1 month of notice period, the company proposes to consider this period as the time of using annual leave. In other words, the employer is trying to fulfill two obligations at the same time with one payment: both "leave" and "notice period".

This practice is legally problematic because it effectively reduces the amount of benefits duty to the employee. The right to pay for the notice period and the right to compensation for unused vacation are independent labor guarantees, and one cannot replace the other without the direct, voluntary and previously agreed consent of the employee. If the employee did not request the use of vacation within the notice period and did not agree in writing to such a "set-off", such an action on the part of the company is unlawful.

The crediting of vacation days as a replacement for the employer's obligation regarding the notice period looks like an attempt to save on the employee's duty payments and does not comply with either labor standards or good business practice.

The employee has every right to demand payment for each of these elements separately.

## **Applicable law**

The applicable law to this legal relationship is not expressly specified in the contract.

At the same time, due to the conflict of laws rules of private international law, the applicable law may be either the law of the country where the company is registered (USA, California) or the law of the country where the employee performed her work (Armenia), or where the employer actually conducts its operations. In addition, the company's policies regulating the conditions for "residents of Ukraine" may indicate the actual application of the provisions of Ukrainian law. In view of this, it is advisable to conduct an analysis from the perspective of both Ukrainian labor law and the laws of the state of California and Armenia.

## **Ukraine:**

According to Article 38 of the Labor Code of Ukraine, in the event of dismissal initiated by the employer, the employee must be provided with the service of the notice period or be paid compensation for this period.

Article 117 of the Labor Code deals with the employer's liability in case of violation of the deadlines for payment of due amounts upon dismissal. Also, according to Article 83 of the Labor Code, in the event of dismissal, the employee is paid monetary compensation for all unused days of annual leave.

No company policy or internal regulations can cancel or limit this norm, even if the employee is familiar with or has signed the relevant document. These guarantees are imperative and protect the employee from a discriminatory reduction in the amount of payments upon dismissal.

## **USA/California:**

In California, according to California Labor Code Section 227.3, all earned paid vacation days are considered wages. Therefore, upon termination of employment, the employer is required to pay full compensation for all unused vacation days.

Any "use-it-or-lose-it" policy is illegal. In addition, under California labor law, an employer may not substitute or reduce notice pay by using vacation days unless the employee expressly consents to it.

Even if such substitution is permitted, it must be voluntary and documented.

## **Republic of Armenia:**

The applicability of the norms of the labor legislation of the Republic of Armenia should be considered separately, since the Client physically performed client's work from the territory of Armenia and is a tax resident of this state.

According to the Labor Code of Armenia, in the event of termination of employment relations at the initiative of the employer, the employee must be notified in writing in advance - the notice period depends on the grounds for dismissal and total length of service.

In cases of general dismissal, the period is at least 14 calendar days, and if the contract provides for a longer period (for example, one month), then it is mandatory to comply with it.

In addition, according to the articles of the Labor Code of Armenia, upon dismissal, the employee is entitled to monetary compensation for all unused days of annual leave.

The company does not have the right to unilaterally replace the vacation with a notice period without the employee's consent - the employee has the right to choose: to use the vacation or to receive monetary compensation. Therefore, even if the norms of Armenian law are applied, Client retains the right to full payment for the notice period and separate compensation for unused vacation.

## **Conclusion:**

Under all of the above jurisdictions, Client has a separate right to:

- payment notice period (30.06–30.07.2025),
- compensation for 8.5 days of unused vacation.

Any attempt to reduce the amount of these payments through unilateral offsetting, without the employee's voluntary and explicit written consent, is legally unfounded. In the event of a legal dispute, the Client would have strong prospects of prevailing in court proceedings across all relevant jurisdictions, with the potential to recover legal fees as well as compensation for moral and reputational damages.

We sincerely hope that this memorandum has provided a clear and well-structured explanation of your legal rights regarding the notice period and compensation for unused vacation. We wish you success in defending your position and in obtaining fair and lawful resolution of your employment termination.

Should you require further assistance, including support in negotiations or formal communication with your employer, we remain at your disposal.

*Sincerely,  
Andriy Navrotskiy*

***Andriy NAVROTSKIY, LL.M.***  
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