

THEORETICAL AND APPLIED FOUNDATIONS OF EMPLOYEE MATERIAL LIABILITY

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Summary

This article delves into the theoretical and practical aspects of employee material liability, focusing on the standards governing the material liability of employees in Ukraine and the European Union. The research aims to analyze the current Ukrainian legislation and international practices to improve approaches to regulating material liability within a market economy. General scientific methods of cognition, such as analysis, comparison, systematization, and generalization, were employed during the study. The findings reveal that Ukrainian legislation stipulates four main types of material liability: full, limited, enhanced, and collective. Full material liability, as regulated by Article 134 of the Labor Code of Ukraine (LCU), applies when there is a written agreement between the employee and the employer, particularly in cases where the employee is entrusted with material assets for use or safekeeping. Key documents for this include an authorization and an agreement. Additional full liability arises in cases of intentional damage or when the employee is under the influence of alcohol or drugs. Limited material liability is applied when the losses are less than the average earnings of the employee and does not cover amounts exceeding this threshold. The procedure for calculating average wages is regulated by the CMU Resolution No. 100 of February 8, 1995. Enhanced material liability pertains to employees involved in the handling of precious metals, stones, and currency valuables and can reach up to double or triple the value of the incurred damages. Collective liability applies to groups of employees jointly responsible for damage caused to the enterprise. The practical significance of the research lies in the potential for enhancing the legal framework governing employee material liability in Ukraine, taking into account European experience.

Key words: material liability, labor legislation, employees, damages, regulation.

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1. Introduction

Since gaining independence, Ukraine has been undertaking comprehensive reforms across various sectors to align more closely with the European Union. One of the most critical areas needing significant modernization is labor legislation. The legacy of the Soviet era continues to influence the regulation of labor relations, necessitating updates to meet modern European standards. This is crucial not only for protecting workers' rights but also for creating an attractive business environment and stimulating economic growth.

Reforming labor legislation is a priority in the context of Ukraine's EU integration processes. Adapting legal norms to EU standards will enhance the competitiveness of Ukrainian workers in the European labor market and create favorable conditions for attracting foreign investments. It is particularly important to ensure the transparency and effectiveness of the

legal mechanisms regulating employee material liability. This will reduce financial risks for businesses while providing adequate protection for employees' rights.

Labor law reforms aimed at EU standards will not only improve the level of legal protection for workers but also promote the harmonization of national legislation with European norms. This will facilitate better integration of Ukraine into the European economic space, create conditions for sustainable economic development, and improve the country's socio-economic conditions overall.

2. Purpose of the study

The purpose of the article is to elucidate the theoretical and practical regulation of employee material liability in Ukraine and to highlight key directions for the development of material liability regulation based on European experience.

3. Analysis of literary sources

The issue of employee material liability has been extensively studied in Ukrainian scientific literature. This section will explore the main approaches and conclusions presented by Ukrainian scholars.

N. M. Khutorian (2003) made a significant contribution to the theoretical understanding of material liability. In her dissertation, she analyzes the theoretical problems of material liability within labor relations. P. S. Lutsyuk (2017) in his doctoral dissertation discusses the conceptual foundations of legal liability in the context of modern labor law development. These works provide a robust theoretical framework for understanding employee material liability. Attention has also been given to the practical aspects of employee material liability. For instance, V. P. Myronenko (2012) in his research examines the concept of employee material liability within labor law. His work focuses on the practical application of material liability norms and includes an analysis of judicial practice in this area. Among contemporary studies, N. V. Kushnir (2017) is noteworthy for her examination of gender parity in liability and labor disputes, providing insights into how material liability impacts employees of different genders. Additionally, O. V. Kuznichenko (2014) explores the challenges and developments in the institution of material liability in modern conditions. Her work highlights the difficulties and obstacles faced by both employees and employers in the implementation of material liability norms. Expert literature, including publications in modern online media, has also been utilized for analysis. For example, Y. Antonchuk's study (2023) investigates cases where employers are liable to employees for damage caused. Similarly, the article from Bachynskyi & Partners (2018) discusses the financial responsibility of employees for damages caused to the company. These publications offer valuable insights into the current aspects and challenges related to material liability in labor relations. Despite the considerable amount of literature on this topic, there is a noticeable lack of comprehensive and systematic material covering all aspects of the study. Therefore, using various scientific methods of cognition, information on employee material liability has been analyzed, grouped, and systematized to achieve a deeper understanding of the topic.

4. Research findings

Ukraine inherited its labor legislation from the Soviet Union, resulting in a framework that, unlike those of most European countries, primarily focuses on protecting the interests

of employees. Despite this, with the push for EU integration and the influx of foreign capital, more organizations are encountering challenges in adhering to labor standards. Consequently, although employee material liability is extensively regulated by law, many companies in practice create conditions to minimize the financial and economic risks to business owners. This often leads to issues in the legal protection of employees facing difficulties with material compensation. The problem is exacerbated by the fact that many citizens lack sufficient legal education to effectively defend their rights (*Antonchuk, 2023*). This study examines what constitutes employee material liability, when it arises, and how it is implemented in practice.

4.1. Definition of material liability

Material liability is a type of legal responsibility where an employee is obliged to compensate for damages caused to the employer due to their fault as a result of not fulfilling their work duties. Material liability arises immediately after the damage occurs and is independent of any other forms of liability (disciplinary, administrative, criminal) or other financial penalties (such as loss of bonuses).

Employees in Ukrainian enterprises are liable for damages caused to the enterprise due to their failure to fulfill their work obligations as per the Labor Code, specifically outlined in Article 130. We will focus on these types of damages in more detail.

4.2. European Labor Legislation

European labor laws dictate that an employee must compensate for all damages (without any limitation on the amount) under the following circumstances:

1. Damages were caused intentionally.
2. Damages resulted from the employee's criminal actions.
3. The employee has a full material liability agreement with the employer.
4. Damages involved the loss of tools, clothing, protective equipment provided for work, or materials, semi-finished or finished products in the production process.
5. Damages were caused in any other way or to any property for which full liability is specified under special laws.
6. Damages were caused while the employee was under the influence of alcohol, drugs, or toxic substances.

In all other cases not mentioned above, the employee is liable for damages up to the amount of their three average monthly salaries (*Gudeliauskiene, 2009*).

4.3. Ukrainian Labor Legislation

In Ukraine, employees are liable for damages resulting from their failure to perform or improper performance of their official duties. Liability requires the presence of several conditions:

1. Violation of official duties.
2. Causing direct actual damage.
3. Guilty, unlawful actions or inaction (*Bachynskyi & Partners, 2018*).

The resolution of the Plenum of the Supreme Specialized Court of Ukraine No. 12 dated December 11, 2015, analyzes the practice of compensating for damages by employees. This document defines what constitutes direct actual damage. All cases can be categorized as follows:

1. Damage related to material assets: This includes the destruction, loss, spoilage, shortage, or damage to material assets.
2. Damage related to additional expenses: This encompasses illegal payments under civil contracts, payments to the state budget, unauthorized payments to employees, and payments to third parties related to damage compensation.

3. Damage related to the non-recovery of expenses or debts: This includes the inability to recover the value of material assets from a supplier (if they were delivered with defects) or to collect receivables due to the expiration of the statute of limitations, and the non-recovery of damages caused by debtors.

4. Selling below established prices: This involves selling goods or services at prices lower than those established by the enterprise or legal regulations (*Lutsyuk, 2017*).

This comprehensive examination highlights the complexity and challenges in applying material liability in Ukraine and underscores the necessity of reform to align with European standards and practices.

4.4. European practice of material liability

Based on the study of scientific and expert literature, in particular Gudeliauskiene (2009) and Contract Administration (2024), the standards governing employee liability can be defined as follows (Table 1).

Table 1

European standards regulating material liability

Scenario	Definition	Burden of Proof	Liability Limits	Is an Additional Agreement Required?
Intentional Fault	Employee breaches duties or intends to cause damage to the employer's property	Employer must prove the employee's fault	Full amount of the damages	Liability arises automatically if fault is proven
Unintentional Fault	Unintentional failure or improper performance of duties by the employee	Employer must prove the employee's fault for each incident	Up to the equivalent of less than 3 months' salary	Liability arises automatically if fault is proven
Property Liability	Responsibility for entrusted property arises when the employee is given material assets under their control	Presumption of the employee's fault; employer does not need to prove fault	Full value of the damages caused	Information is included in the employment contract

Note: compiled by the author

4.5. Ukrainian practice of material liability

Ukrainian labor legislation specifies four types of material liability for employees: full, limited, enhanced, and collective. Each type is detailed below.

Full Material Liability. Full material liability for employees in Ukraine is regulated by Article 134 of the Labor Code of Ukraine (LCU). Key conditions under which an employee may bear full material liability include its specification in a written agreement between the employee and the employer for assets and property entrusted for use or safekeeping. Additionally, the employee must receive a single-use authorization or other documents that establish ongoing responsibility for material assets. Therefore, the main documents defining full material

liability are the authorization and the contract between the employee and the employer. Additional full liability occurs when damage is caused intentionally or under the influence of alcohol. It is important to note that a written agreement on full material liability can only be made with employees holding specific positions and performing certain tasks as outlined in relevant lists and regulations.

Limited Material Liability. Limited material liability is not subdivided into partial or fractional liability. If an employee causes damage to the enterprise that is less than their average earnings, they must compensate the full amount of the damage, which is determined based on their average earnings, not the portion of the damage caused. Any amount exceeding the average earnings is not reimbursed by the employee. If the actual damage is less than the average monthly salary, the employee is required to compensate the full amount of the damage caused to the employer. The calculation of the average monthly salary is governed by the Procedure for Calculating Average Wages, approved by the Cabinet of Ministers of Ukraine Resolution No. 100 of February 8, 1995.

If the limits of material liability are specified in the employee's contract, the conditions of material liability are determined by the contract (*Myronenko, V. P., 2012*). For material liability within the limits of the average monthly earnings, its amount is determined according to the Procedure for Calculating Average Wages. This procedure is established by the CMU Resolution No. 100 dated 08.02.1995. The average earnings are calculated based on payments for the last two months of work preceding the court case. If the employee worked for less than two months, the amount is determined based on the actual time worked. In cases where the employee did not work in the last months before the case or the case is considered after their dismissal, the calculation is made based on payments for the previous two months of work at the same enterprise (institution or organization) (Paragraph 4 of Resolution No. 14).

Enhanced Material Liability. Enhanced material liability, as per the Law of Ukraine No. 217 dated June 6, 1995, applies to employees whose activities involve managing, transporting, or using precious metals and stones, jewelry, and currency valuables. This liability also extends to those involved in theft, destruction, or shortage of these valuables due to negligence or violation of special rules. The amount of material liability depends on the nature and value of the damage caused during the handling or use of precious materials, stones, or currency valuables and can reach double or triple the value of the damages, depending on the type of damaged property (*Khutorian, 2003*).

4.6. Ukrainian practice of concluding full material liability agreements

Currently, many companies practice signing full material liability agreements with most of their employees. This legal tool undoubtedly enables employers to recover full damages and enhances the level of employee responsibility for proper performance of their duties and the prevention of actual losses. However, it is important to note that a full material liability agreement is mandatory and legally effective only if the following conditions are met.

- scope of application: a full material liability agreement can be concluded with employees whose work directly involves the storage, receipt, issuance, sale, purchase, and transportation of material assets, as well as the use of personal protective equipment issued to the employee for work.
- specification of duties: the specific types of work and responsibilities must be outlined in the collective agreement or the company's work regulations (if no collective agreement is adopted).
- written form: the full material liability agreement must be in written form.

– responsibilities: the agreement must clearly specify which types of material assets the employee is fully responsible for and what obligations the employer is responsible for, including conditions that prevent liability.

Collective agreement requirement: the most critical and specific of these conditions is the legal requirement to have a collective agreement within the company. Without it, it can be very challenging to recover full damages caused by an employee, and the full material liability agreement may be deemed invalid.

4.7. Methods of damage compensation

There are two methods for employees to compensate for damages:

By employer's directive: if the offense directly affects the enterprise and the employee is liable within the limits of their average monthly salary, compensation is made by deducting the damage amount from the employee's wages (up to 20% of one salary).

Based on a court decision: In other cases, damages are compensated based on a court decision. If the damage is caused to third parties, a lawsuit is filed for compensation through recourse (*Bachynskiy & Partners, 2018*).

4.8. Judicial practice of property compensation

Case 1: Ensuring Property Preservation Conditions

Proof of the employee's fault is mandatory, and the employer must ensure conditions for property preservation. The Kaniv District Court of Cherkasy Region, in case No. 697/2755/17, dismissed the claim of a Private Joint-Stock Company against an employee who worked as a repair mechanic and received material assets under single-use authorizations. The employer argued that the employee should be liable for shortages found during the inventory due to the existence of a full material liability agreement. However, the employee's job responsibilities did not include the duty to safeguard the property. Some of the evidence provided by the employer was contradictory and deemed unreliable, while other evidence lacked sufficient specific information to support the plaintiff's claim. Moreover, it was established that the employer had not created adequate conditions for property preservation. As a result, the court concluded that if the employer failed to provide the necessary conditions and there was no employee fault, the employee could not be held liable.

Case 2: Recovery of Excess Payments to an Employee

There is also practice regarding the recovery of unjustifiably received bonuses and allowances. For example, the Dzerzhinsky District Court of Kharkiv, in case No. 638/12192/16-c, recovered from the defendant, a former director of a state enterprise, the previously paid allowances. The court found that the contract included a provision prohibiting the director from receiving a bonus in the event of wage arrears to employees. Given the wage arrears, the court recognized that the director had violated the contract's terms, making the allowances unlawful.

Case 3: Compensation Through Recourse

In this scenario, the employer first compensates third parties and then seeks recovery from the employee. In case No. 380/1285/18, the employer filed a lawsuit to recover damages from an employee through recourse. The employee, a tractor driver, accidentally drove into adjacent plots owned by another party while working, causing all sunflower crops to be destroyed. The employer received a claim and compensated for the damage caused by the employee, then sought to recover the compensation amount from the employee through the court. In another case (No. 468/1497/17-c), damages caused to a third party were similarly recovered through a court decision following an accident caused by a driver during the performance of their duties (*Bachynskiy & Partners, 2018*).

4.9. Problems of regulating employee material liability in Ukraine

After examining the scientific and regulatory framework governing employee material liability, it is evident that current Ukrainian labor legislation encounters numerous challenges in this area. The existing legal norms often do not align with modern economic realities and require enhancements for more effective regulation. The key issues in regulating employee material liability in Ukraine are as follows:

1. Inconsistency with the principle of social justice: the current approaches to employee material liability do not always embody the principle of social justice, resulting in inequality in the relationship between employees and employers.
2. Limitations on liability: existing norms prescribe limited material liability, which may be inappropriate in a market economy where significant damages caused by employees can occur.
3. Inadequate consideration of personal circumstances: the legislation does not consistently account for the employee's financial status, degree of fault, or other personal circumstances affecting their ability to compensate for damages.
4. Lack of integration with international law: the absence of alignment with international legal norms in the field of employee material liability leads to imbalances in the regulation of labor relations.
5. Gender equality issues: the failure to adequately address gender aspects in material liability and labor disputes can result in gender-based discrimination.

Different studies offer the following suggestions to address these issues:

1. Social justice in liability regulation: Myronenko (2012) recommends incorporating the principle of social justice into the regulation of material liability by considering the employee's financial condition and degree of fault. This would promote a more equitable distribution of responsibility.
2. Transition to full material liability: Khutorian (2003) suggests moving away from limited material liability towards full liability, which would better reflect market economy realities and ensure fair compensation for damages.
3. Increasing the limits of limited liability: Kuznichenko (2014) proposes raising the limit of limited material liability to several months' average wages, offering better protection for both employees and employers.
4. Integration with international standards: It is crucial to integrate international legal norms into the regulation of material liability to harmonize national legislation with global standards and improve the regulation of labor relations.
5. Considering personal circumstances: Mechanisms should be developed to take into account the employee's personal circumstances when determining the extent of material liability, as suggested by Myronenko (2012).
6. Special considerations for minor employees: Prylipko (2014) emphasizes the need to account for the unique circumstances of minor employees, who often have less qualification and experience.
7. Addressing gender equality: Kushnir (2017) highlights the importance of resolving gender inequality issues in the application of material liability and labor disputes, which will help reduce gender-based discrimination.

5. Conclusions

The regulation of employee material liability in Ukraine and European countries differs significantly, impacting the effectiveness of labor relations. In European practice, unintentional

breaches are generally limited to liability up to the equivalent of three months' salary. This approach provides an adequate level of social protection for employees, considering their personal circumstances and reducing financial risks.

In Ukraine, limited material liability is capped at the average monthly salary. This level is considerably lower compared to European standards, creating an imbalance. Given the lower wage levels in Ukraine, even the maximum amount of limited liability often fails to cover substantial damages. This leaves employers exposed to financial losses while not adequately encouraging employees to take responsibility for their duties.

To address these shortcomings, it is advisable for Ukrainian legislation to revise the limits of limited material liability. Raising this limit to the equivalent of three months' salary would better protect employers' interests while ensuring fair responsibility for employees. This adjustment would help balance the rights and duties of both parties, align the legislation with modern economic conditions, and enhance social justice in labor relations.

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