



Dear Readers,

In this Special Issue of News Flash, we offer you an overview of recent amendments and additions to Kazakhstan labor legislation.

New Labor Code

On 1 January 2016, the new Labor Code (hereinafter - the "Code") came into force. The Code establishes only basic guarantees and rights for employees and secures a possibility to extend them in individual or collective agreements. The Code also simplifies human resources management procedures for employers (such as recruitment, relocation, dismissal, remuneration). Under the Code, employment relationships should be mostly self-regulated through collective negotiations and agreements concluded between employers and employees.

Staff Recruitment Procedures

The Code restricts an employee from performing actions negatively affecting his/her employer. For example, an employer may forbid an employee to work in a similar (competitive) industry simultaneously or during a specified period after the employee quits the employer.

An employment contract concluded for a fixed period may be extended for another fixed period (not less than one year). The number of such extensions should not exceed two times. In the previous Labor Code, an extension of an employment contract with a fixed period meant that the contract was concluded for an indefinite period.

If upon an expiration of the employment contract of the head of an entity, the parties to the contract did not notify each other on the termination of the employment relationships, the employment contract would be regarded as extended until the shareholders decide to appoint a new or to retain the existing head, unless the shareholders' decision states otherwise.

If a sole individual founder (shareholder, partner) of a company is regarded as the only executive body of the entity, an employment contract with the individual is not concluded.

The Code excluded a requirement to establish the minimum two-year employment period in employment contracts with young specialists employed for the first time. The Code also abolished restrictions on establishing probation periods for certain categories of employees.

A probation period for the heads of entities and their deputies, chief accountants and their deputies, heads of branches and representative offices may be extended for up to six months. If an employee receives a promotion during the probation period, the probation period continues.

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Work and Remuneration Terms

The Code clarifies that remuneration must be established and paid in Kazakh tenge.

The Code decreased the lower limit on compensations for work on public holidays and on weekends from two to one and half times regular salary. The Code also allows employers to compensate the overtime by providing time off (one hour of overtime for one hour of time off) upon mutual agreement of the parties.

When idle hours occurred for reasons beyond the employer or employees control, the employer should compensate these hours to employees under the terms of the employment agreements but not less than at the minimum monthly salary established by the state. Previously, employers had to pay employees for idle hours at the rate of at least 50 percent of the average monthly salary.

According to the new Code, an employer may withhold the following expenses from an employee's salary without the employee's written consent (upon a written notice):

- Undocumented business trip expenses;
- Training expenses;
- Advance salary payments;
- Vacation payments in case of rescheduling of an annual vacation.

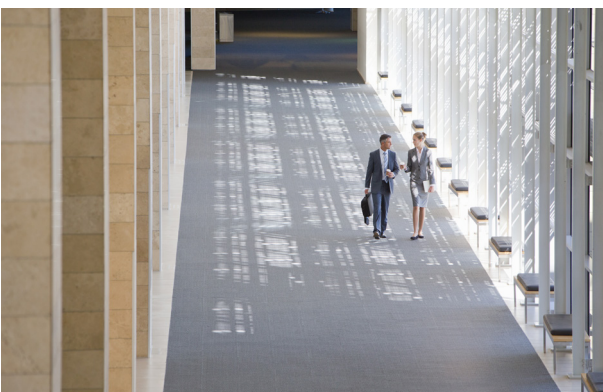
The previous Labor Code restricts an employer from sending on a business trip employees under the age of 18 years, pregnant women or disabled individuals. The Code allows employers to send those employees on business trips unless it is forbidden for medical reasons. In this case, they have a right to refuse to go to a business trip.

Vacations

The Code stipulates that an employee and his/her employer can agree to split the employee's annual vacation. However, the duration of one part of the vacation must be at least two weeks.

The Code excluded a provision allowing a pregnant woman to take an annual vacation at her convenience, i.e. prior or upon the maternity leave, or after the newborn care vacation.

Under the Code, employers must secure jobs for their employees studying under the "Bolashak" International Scholarship during their study leaves.



Labor Contract Termination

The Code introduced the following new grounds for an employer to terminate a labor contract:

- A decrease in a company's production causing a deterioration of the employer's financial position;
- Repeated failure of an employee to pass work safety assessment or industrial safety assessment if the employee is in charge for work safety in a manufacturing company;
- A company owner(s) decision on cessation of powers of the head of the company's executive body, members of the company's collective executive body, employees of the company's internal audit function or the corporate secretary;
- Employee's achievement of the retirement age established by Kazakh pension legislation. Upon a mutual agreement, an employer may extend a labor contract with an individual of the retirement age on an annual basis;
- Employee's absence from work for more than one month for reasons unknown to the employer.

Secondment

The Code introduced the term "secondment." A secondment of an employee (secondee) is a temporary transfer of the secondee for performance of work in another legal entity, except for cases restricted by law.

The Code permits a secondment to:

- a legal entity shares (stakes) of which directly or indirectly belong to an entity sending employees on the secondment;
- a legal entity which directly or indirectly owns voting shares (stakes) of an entity sending employees to the secondment;

A written agreement between seconding and hosting legal entities should outline the number of seconded employees and their positions. A trilateral agreement between a secondee, the seconding entity and the hosting entity should define the terms and conditions of the secondment. An employer seconding an employee keeps the secondee's job (position) for the secondment period.

Dual Education

The Code introduced dual education provisions. Dual education is a form of education that combines formal studying with internships. A dual education agreement is a written agreement between a student, an educational organization and a company providing a work place for the internship outlining terms and procedures for the student's internship.

During an internship, a student (intern) performs assignments that are then included in his/her work experience. An employer may compensate an intern for the performed work. Interns are subject to the code of conduct and the health and safety requirements of the employer.

Declaration of Employer's Activities

In accordance with Article 16 and Article 200 of the Code, the state approved rules¹ for the declaration of employer's activities. The declaration of employer's activities is a procedure for the recognition of the employer's activities as fully compliant with the requirements of labor legislation of Kazakhstan. The state labor authorities initiate the procedure at an employer's request.

To participate in the procedure, an employer submits to the labor inspection department at the place of the employer's registration a declaration statement in the established form (the Declaration) on the proper fulfillment of the employees' rights. Within 20 business days upon the submission of the Declaration, the labor inspection department makes a decision on compliance or noncompliance of the applicant with labor law requirements.

Within five business days after making the decision, the labor inspection department grants the employer recognized as compliant with the requirements of labor legislation a Trust Certificate in an established form. A Trust Certificate is valid for three years. Employers owning the Trust Certificates are not subject to random inspections of local labor authorities. The state labor authorities publishes the list of employers having the Trust Certificates on their web site.

The rules came into effect on 1 January 2016.

Attraction of Expatriate Employees

Law "On Amendments and Additions to Certain Legislative Acts on Migration and Employment"² introduced changes to the procedure for attraction of expatriate employees. The law provides new benefits for attraction of expatriate employees in Special Economic Zones (SEZ). Now, quotas and work permit requirements do not apply to expatriate individuals employed by companies-members of SEZ working on projects with the total project value of over one million times monthly index factor (2,121 billion tenge in 2016) and by their contractors during the construction and erection works in the SEZ and during one year after the commissioning of the constructed facilities. A special interdepartmental state commission will establish the list of professions and the number of employees qualifying for the newly introduced benefits. The law also abolished a simplified procedure for obtaining a work permit in SEZ without searching candidates in the internal labor market.



In addition, the following new provisions of labor legislation related to attraction of expatriate employees will enter into force on 1 January 2017:

- The state will charge fees for the issuance of work permits. The Government will establish the amount of the fee for the issuance/extension of a work permit. It is planned that the base rate for the fee will be the estimated annual expenses for technical and professional education of one specialist. The amount of the fee will be adjusted depending on the industry and category of an expatriate employee being hired;
- The fees will not apply to intra-corporate transfers³;
- Quotas and work permit requirements will not apply to foreign nationals arrived to Kazakhstan for self-employment in occupations demanded in the priority sectors of economy. Work permits will be replaced by qualification statements for self-employment;
- The Ministry of Labor and Social Protection will establish qualification requirements and a procedure for the issuance of qualification statements for self-employed expatriate employees, as well as occupations demanded in the priority sectors of economy and the list of priority sectors of economy for self-employment.
- An expatriate individual may apply for a qualification statement to Kazakhstan foreign diplomatic institutions (embassies and consulates). Expatriate individuals based in Kazakhstan may obtain qualification statements for self-employment in the Population Service Centers.
- An expatriate individual with a qualification statement for self-employment can stay in Kazakhstan for up to three months to find a job. If the expatriate employee successfully finds a job, his/her stay in Kazakhstan will be extended for the term of his/her employment contract, but no longer than three years.
- Quotas for attraction of expatriate employees will be established:
 - by types of economic activities;
 - by country of the expatriates origin;
 - for attraction of labor migrants.

In addition to the abovementioned amendments, a governmental resolution introduced the following changes to the rules for the attraction of expatriate employees⁴:

- The amendments excluded a requirement to comply with the special terms for issuance/extension of work permits for expatriate employees of the first category (chief executives and their deputies)⁵;
- The maximum duration of a business trip of a foreign employee to another administrative-territorial unit extended from 60 to 90 days during a calendar year;

¹Order No. 909 of the Minister of Healthcare and Social Development of Kazakhstan On Approval of Rules for the Declaration of Employer's Activities, dated 30 November 2015

²Law of the Republic of Kazakhstan No. 421-V On Amendments and Additions to Certain Legislative Acts Related to Migration and Employment of Population, dated 24 November 2015

³An intra-corporate transfer is defined as a temporary transfer of an expatriate employee from a company incorporated in the WTO member-country to a branch, a subsidiary or a representative office of this company in Kazakhstan for up to three years (with possibility for one-year extension)

⁴Governmental resolution No. 844 of 28 October 2015 On Introduction of Amendments and Additions to Governmental Resolution No. 45 of 13 January 2012 On Approval of the Rules for Quotas on Attraction of Expatriate Employees in Kazakhstan, the Rules and Terms of Issuance of Work Permits for Employment of Expatriate Employees, and On Amendments to Governmental Resolution No. 836 of 19 June 2001 On Measures for Implementation of the Law of the Republic of Kazakhstan of 23 January 2001 On the Population Employment

⁵Special terms for attraction of expatriate employees of the first category was a requirement to provide trainings and/or create additional jobs for Kazakh citizens

- If an employer sends an expatriate employee to a business trip within Kazakhstan, the employer is required to notify the internal affairs departments at the place of the employee's registration and at the place of his/her destination;
- Work permits may no longer be valid in several administrative-territorial units;
- The following professions were added to the list of professions for self-employment of expatriate individuals:
 - Information database administrator;
 - System analyst;
 - Digital technology specialist.

The resolution came into effect on 16 November 2015.



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