

Fact Sheet: Employment of Foreign Nationals in Kazakhstan

This fact sheet provides basic information on the status of foreign national employees in Kazakhstan and issues that should be considered when hiring or dismissing foreign national employees.

1. Legal Status of Foreign Nationals in Kazakhstan

Foreign nationals may be employed in Kazakhstan under the terms and conditions established by Kazakhstan law and international treaties to which Kazakhstan is a party. Foreign nationals in Kazakhstan are divided into two categories: (i) temporarily residing and (ii) permanently residing (i.e., those having a residence permit). Both categories enjoy the same rights and are subject to the same obligations as Kazakhstan citizens, save for certain restrictions. For example, foreign nationals may not serve in government positions or other positions reserved for Kazakhstan citizens.

Subject to certain exceptions, foreign nationals must have a work permit or a residence permit in order to be employed in Kazakhstan.

2. Work Permits

Work permits are generally obtained by and issued to employers looking to attract foreign nationals. Work permits are issued by the local labour authorities, based on annual quotas for foreign labour that are established by the Kazakhstan government. In order to qualify for a work permit, a Kazakhstan employer must comply with, among other things, the following local-to-foreign national employee ratios:

- At least 70% of the employer's first and second category employees, such as a chief executive or branch or representative office head, must be Kazakhstan nationals.
- At least 90% of the employer's third and fourth category employees, such as managers, specialists, and other qualified personnel, must be Kazakhstan nationals.

These ratios are not applicable to the following entities:¹

- Small businesses²
- State enterprises and state-owned companies
- Priority projects (e.g., China–Kazakhstan pipeline)
- Subsoil users involved in the Karachaganak, Northern Caspian, and Tengiz projects, as well as their operators, contractors, and subcontractors³

Under the Work Permit Rules,⁴ the following foreign nationals, among others, are not required to obtain a work permit:

- Permanently residing foreign nationals
- Foreign nationals on a business trip, provided the term of the business trip(s) does not exceed 120 cumulative calendar days during one calendar year

1. The article listing these exceptions is in force until Kazakhstan enters the World Trade Organization.

2. Small businesses are (i) individual entrepreneurs who do not form a legal entity and have an average annual number of no more than 50 employees and (ii) legal entities with an average annual number of no more than 50 employees and an average annual asset value that does not exceed approximately US\$ 692,400.

3. The article listing the subsoil user exception is in force until January 1, 2015, if an employer confirms its participation in said subsoil use projects.

4. Pursuant to the Rules and Conditions for Granting of Permit for Employment to Foreign Employee and to Employers for Attracting Foreign Manpower approved by Government Decree No. 45 (13 Jan. 2012) (Work Permit Rules).

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- Citizens of countries that entered into the International Treaty on Legal Status of Working Immigrants and their Family Members between the Russian Federation, Republic of Belarus, and Republic of Kazakhstan, dated 19 November 2010⁵
- Foreign nationals acting as the head of a branch or representative office of a foreign legal entity

The duration of a work permit and the ability to prolong it depend on the category of the foreign employee. For example, work permits for fourth category employees (the lowest category) and seasonal workers are issued for up to a 12-month period with no option to prolong the work permit, while work permits for first category workers are issued for up to three years with an option to prolong annually for another 12 months, subject to certain exceptions.

The Work Permit Rules allow the reissuance of a work permit originally issued to one foreign national in favour of another foreign national if one of the following conditions is met:

- The original foreign national did not reach the place of employment.
- The original foreign national's employment agreement was terminated before the work permit expired.

It should also be noted that work permits are often, but not always, issued subject to conditions placed on the employer, such as professional training requirements for the employer's local employees.

3. Creating and Terminating Employment Relations

Employment relations in Kazakhstan arise on the basis of an employment agreement. A foreign national must have a valid work permit or residence permit before being eligible to enter into an employment agreement with a Kazakhstan employer for work in Kazakhstan.

The basic grounds for termination of an employment agreement include the following:

- Mutual consent of the parties
- Expiry of the employment agreement
- Unilateral termination by the employer
- Unilateral termination by the employee
- Violation of the employment agreement execution procedures (e.g., absence of a work permit)
- Termination under grounds specified in the employment agreement and concluded with the head of the executive body of the employer

An employment agreement may not be terminated unilaterally by an employer during an employee's temporary disability or annual paid leave, unless the employer is being liquidated or the employee is absent from work due to temporary disability for two consecutive months.

The head (e.g., general director) and members of the management body of a legal entity may be terminated unilaterally by resolution of the owner/shareholder or authorized body of the legal entity.

When terminating an employment agreement, it is advisable to strictly follow all local termination procedures and enter into a termination agreement with the terminated employee, especially when the termination was initiated by the employer due to the employee's violation of the labour code or employment agreement.

The Kazakhstan courts often rule in favour of employees, particularly after recent social unrest in the western part of Kazakhstan. Recent court decisions have required reinstating employees due to minor deficiencies in

5. Enacted on the basis of Customs Union and Common Free Market Zone Treaty between the Russian Federation, Republic of Belarus, and Republic of Kazakhstan. The treaty stated that citizens of one participating country were not required to have a work permit to be employed in another participating country (e.g., a Russian Federation citizen can work in Kazakhstan without obtaining a work permit and vice versa).

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documenting termination procedures, such as the failure by the employer to obtain the employee's signature acknowledging the termination order.

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