

Labour & Employment

In 40 jurisdictions worldwide

Contributing editors

Mark Zelek, Matthew Howse, Sabine Smith-Vidal and Walter Ahrens



2015

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Labour & Employment 2015

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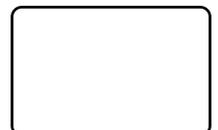


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Kazakhstan

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

The main statutes relating to employment are:

- the Kazakhstan Constitution, which sets out the basic rights relating to employment; and
- the Labour Code, which regulates employment and related matters, social partnerships, safety and protection of labour.

There are various other laws and normative acts that regulate specific labour-related matters. For example, the Law on Migration regulates aspects of foreign labour, and Government Regulation No. 45 of 13 January 2012 regulates work permits issued to foreign nationals.

A special employment regime is set out for the citizens of the member states of the Eurasian Economic Union in accordance with the International Treaty among Kazakhstan, Belarus and Russia on Eurasian Economic Union, dated 29 May 2014 and which came into force on 1 January 2015.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Kazakhstan Constitution generally prohibits discrimination based on descent, social, occupational and financial status, gender, race, nationality, language, religion, opinion, place of residence and any other grounds. Discrimination in employment is specifically prohibited by the Labour Code, which guarantees:

- an equal opportunity to enjoy labour rights and freedoms;
- non-discrimination in labour rights on the grounds of gender, age, physical shortcomings, race, nationality, language, social, occupational and financial status, place of residence, religion, political opinion, clanship or social class, or public associations; and
- the right to sue for discrimination.

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Ministry of Public Health and Social Development is responsible for the enforcement of employment statutes and regulations. Certain labour matters, for example, those related to the employment of foreign nationals, may be enforced by the Ministry of Internal Affairs.

Worker representation

4 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the workplace?

The Labour Code allows employees to establish the following types of commission in the workplace:

- A collective bargaining agreement commission established to negotiate and draft collective bargaining agreements. Collective bargaining agreements may be initiated in local companies, as well as in branches and representative offices of foreign legal entities.
- A conciliation commission established to resolve individual labour disputes if employees cannot resolve the disputes directly with the employer. If the decision of the conciliation commission is not

implemented within the period set out in the commission's resolution, the employee or employer, as the case may be, may apply to a court for enforcement of the decision.

- A mediation commission established to resolve collective labour disputes (eg, employer's compliance with labour law or collective bargaining agreement). A duly taken resolution of the mediation commission is binding on the parties. If the mediation commission fails to reach agreement on a dispute, the dispute may be conveyed to labour arbitration – an ad hoc commission that includes representatives of the employer, employees and state authorities.
- A safety and labour protection committee may be established by the initiative of the employer or employees (or both). The committee's purpose is to:
 - develop labour safety rules;
 - prevent workplace injuries and occupational illness;
 - arrange for workplace inspections and inform employees of the results of such inspections; and
 - draft collective bargaining agreement provisions related to the protection of labour.

All of the foregoing commissions should be established on a parity basis; the number of representatives and the order and terms of operations of each of the commissions are established on a case-by-case basis.

Background information on applicants

5 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Employers are entitled to obtain the relevant information directly from employees, but cannot obtain an applicant's criminal or credit record directly from publicly available sources. Security checks may be conducted if the position is security sensitive (eg, national security officers). Background checks regarding union membership or political or religious affiliation are prohibited. Hiring a third party to conduct background checks is not regulated and does not appear to be prohibited, provided the third party conducts its activities in accordance with the law.

6 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

There are no prohibitions on requiring a medical examination as a condition of employment. In fact, medical examination as a condition of employment is expressly required for certain occupations where the physical ability and condition of an applicant are essential to the work to be performed (eg, heavy lifting or dangerous work, work under harmful (very harmful) or hazardous conditions), and for certain categories of applicants (eg, younger than 18 years old). Moreover, under the Health and Healthcare System Code, employers may not employ persons that have not undergone medical examinations for certain activities. Therefore, an employer may in some cases refuse to hire an applicant who does not undergo a medical examination and submit the results to the employer.

7 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no restrictions or prohibitions on drug and alcohol testing of applicants. Moreover, certain normative acts even require such tests

prior to employment (for example, for those who want to be employed in national security forces).

Hiring of employees

8 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

No, there are no such legal requirements (see question 2). The Labour Code permits an employer to provide exceptions, preferences and benefits to citizens requiring social and legal protection, and such exceptions, preferences and benefits are not considered discrimination.

9 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

Yes, a written employment contract is mandatory. Employment contracts must contain the following:

- parties' details:
 - for an employer-individual: surname, name and patronymic (if specified in the document certifying the identity); address of permanent place of residence and information on registration at such address; name, number and date of issue of the document certifying the identity; and individual identification number (business identification number);
 - for an employer-legal entity: full name and address of the employer; number and date of the state registration; and business identification number; and
 - for an employee: surname, name and patronymic (if specified in the identification document) of the employee; address of permanent place of residence and information on registration at such address; name, number and date of issue of the identification document; and individual identification number;
- job description in accordance with specific profession or qualification;
- location of work;
- employment contract term;
- starting date;
- work hours and rest time;
- remuneration;
- description of work conditions, guarantees and privileges where the work is recognised as heavy or is performed under harmful (very harmful) or hazardous conditions;
- rights and obligations of the employee;
- rights and obligations of the employer;
- procedure for the amendment and termination of the employment contract;
- guarantees and compensatory payments and relevant payment procedure;
- insurance clause;
- liabilities of the parties; and
- date of the employment contract and its serial number.

10 To what extent are fixed-term employment contracts permissible?

The general rule is that employment contracts should be valid for at least one year. An employment contract with a young specialist (up to 29 years old) should have a duration of at least two years when it is his or her first place of employment. Fixed-term employment is permissible only:

- when there is a need for substitution of a temporarily absent employee for the duration of a specific project or for the performance of seasonal works; or
- within the term of a work permit/permission of a foreign employee/foreign labour immigrant.

Employment contracts with the executive body of a legal entity (eg, CEO or president) must be concluded for a fixed term established by a company's constitutional documents or as agreed between an employee and employer in the employment contract within the permitted maximum term.

11 What is the maximum probationary period permitted by law?

The maximum probationary period is three months. The employment of the following categories of employees may not be subject to a probationary period:

- persons employed as winners of competitions to fill vacancies;

- persons under eighteen years old, or who recently graduated from college or university, or when it is their first place of employment under a specialisation, but in any event not later than one year after graduation from the relevant college or university; and
- disabled persons.

12 What are the primary factors that distinguish an independent contractor from an employee?

Independent contractor work is governed by civil law contract rules (eg, service agreement). Independent contractors are free to determine and agree on the terms and conditions of their work. Employees, on the other hand, are hired based on employment contracts governed by the Labour Code, are part of an employer's operational organisation, perform work personally and specific to their roles within the organisation, are paid on a monthly basis regardless of the results of their work and must comply with internal labour policies. Independent contractors may be subject to, depending on the terms and conditions of the relevant service agreement, material (commercial) liabilities for undue provision of services.

Foreign workers

13 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

Business visas are issued to foreign nationals travelling to Kazakhstan for short-term business purposes. There are four categories of business visa depending on the number of entries: one (single) entry, two entries, three entries and multiple entries. Business visas for up to three entries can be issued for up to 90 calendar days. Multiple-entry business visas can be issued for the maximum period of three years. The duration of a foreign national's visit to Kazakhstan should not exceed 30 days. The overall stay of a foreign national in Kazakhstan during one calendar year should not exceed 60 days within a 180-day period.

An employee transferring from a foreign corporate entity to work for a related entity in Kazakhstan must obtain a work visa. A work visa is issued on the basis of a work permit and for the term of a work permit.

14 Are spouses of authorised workers entitled to work?

Spouses of authorised workers (ie, workers holding a valid work permit) are not entitled to work. The spouse is, however, subject to general work permit rules.

15 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

A Kazakhstan employer may employ foreign nationals on the basis of a validly issued work permit. The number of issued work permits may not exceed the yearly quota for foreign labour set annually by the Kazakhstan government. The issuance of work permits is subject to detailed statutory requirements. Certain foreign nationals and categories of employees are exempt from work permit requirements. Obtainment of work permits is a time-consuming and document-intensive process.

Employing a foreign national who is not entitled to work in Kazakhstan constitutes an administrative offence. The maximum fine is approximately US\$11,000 for the employer, and foreign nationals illegally residing in Kazakhstan and engaged in labour activity without a required work permit may be fined up to approximately US\$270, be arrested for 10 days or be deported from Kazakhstan.

16 Is a labour market test required as a precursor to a short or long-term visa?

Labour market tests are not required for short- or long-term business visas. A labour market test is, however, a prerequisite to receiving a work permit and subsequent work visa. The authorities will consider a work permit application if there are no local employees qualified for the vacancy. A labour market test is not required for employers to hire foreign employees to work in special economic zones, or to hire ethnic Kazakhs and former compatriots.

Terms of employment

17 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Under the Labour Code, the number of normal working hours should not exceed 40 hours per week.

The following limited working hours per week have been established for those younger than 18 years old:

- from 14 to 16 years old – not more than 24 hours; and
- from 16 to 18 years old – not more than 36 hours.

For those who combine study and work, the limits are 2.5 hours per day (from 14 to 16 years old) and 3.5 hours (from 16 to 18 years old). For employees involved in dangerous work or working under harmful or hazardous conditions, and for certain disabled people, the maximum number of hours is 36 hours per week.

The maximum daily working hours in a regular working week (Monday to Friday) is eight hours, and seven hours for an extended working week (Monday to Saturday). Alternative daily working-hour arrangements may be established for certain categories of employees (eg, sportspeople or journalists).

Overtime work should not exceed two hours a day for each employee or one hour for employees engaged in dangerous works or working under harmful (very harmful) or hazardous conditions. The total amount of overtime work for all employees should not exceed 12 hours a month and 120 hours a year.

Also, the Labour Code permits shift work and cumulative hour schemes for work that, due to its nature, cannot follow regular working-hour requirements.

18 What categories of workers are entitled to overtime pay and how is it calculated?

All workers are entitled to overtime pay if they are engaged in overtime work. Pregnant women and employees younger than 18 years old cannot be engaged in overtime work. The Labour Code sets minimum rates for overtime pay, which may be increased by employment contract or collective bargaining agreements. The calculation of overtime pay depends on the payroll system established by the employer; however, overtime pay must be no less than 50 per cent or 1.5 of the salary.

19 Can employees contractually waive the right to overtime pay?

As a matter of practice, yes. However, the state labour authorities do not support such practice and this type of contractual waiver may result in the administrative liability of an employer.

20 Is there any legislation establishing the right to annual vacation and holidays?

Annual paid vacation is mandatory. Minimum annual paid vacation is 24 calendar days, unless a greater number of days are provided by some other regulatory legal act, employment contract, collective bargaining agreement or the employer. Additional paid vacation must be provided to the following employees:

- persons engaged in dangerous work or working under harmful (very harmful) or hazardous conditions: at least six additional calendar days per year;
- disabled persons of the first and second categories: at least 15 calendar days; and
- persons who have suffered an ecological disaster (eg, the Aral Sea region) and nuclear testing (eg, Semipalatinsk nuclear test site): the number of additional paid vacation days depends on the person's residency in the relevant zones.

Annual paid vacation accrues at a rate of one-twelfth of the annual paid vacation per completed month. The amount of annual paid vacation is calculated in calendar days without counting holidays which fall on vacation days, regardless of applicable work regimes and work schedules. When calculating the total amount of an annual paid vacation, additional paid vacation must be added to the main annual paid vacation.

There are 12 public holidays per year.

21 Is there any legislation establishing the right to sick leave or sick pay?

Employees have the right to sick leave and sick pay. Sick leave must be supported by a medical certificate issued by a licensed doctor. Sick leave cannot be longer than two months. The level of sick pay is determined on the basis of the employee's average monthly salary and depends on the completed period of work excluding overtime pay, annual vacation pay, business trips, etc.

22 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

The Labour Code sets out the following types of leave of absence (in addition to annual vacation described in question 20):

- leave without pay;
- study leave; and
- maternity leave, leave for adopting newborn child, leave for taking care of a child under three years old.

Employers are obliged to grant employees leave without pay for up to five calendar days for marriage registration, birth of a child, death of close relatives and as provided in employment contracts and collective bargaining agreements. In other cases, employees are allowed to take leave without pay with the employer's prior consent.

Study leave is granted to employees enrolled in educational institutions to prepare for and take tests and exams, participate in training and research projects, prepare and defend theses (projects), or participate in military training programmes. Paid study leave is determined by employment contract and collective bargaining agreement.

Maternity leave commences 70 calendar days prior to expected childbirth and ends 56 calendar days after childbirth (70 days in the case of multiple births or post-birth complications). Leave for adoption of newborn children is provided to one of the parents one day prior to adoption and 56 days after the child's birth. During maternity leave or leave for adopting a newborn child, a woman (parent) receives social parental pay from the government, and the employer is required to make up the difference between maternity pay and the employee's average net compensation if such obligation is provided in the employment contract or collective bargaining agreement.

Leave for taking care of children under three years old is provided to one of the child's parents and is not paid by the employer.

23 What employee benefits are prescribed by law?

There are several types of social benefits and compensation packages, such as:

- mandatory pension deductions;
- social security benefits (comprises contingencies such as disability, survivorship, job loss, pregnancy and childbirth, adoption of newborn children, taking care of a child under one year old);
- occupational accidents insurance (borne by the employer);
- employees' temporary disability benefits (borne by the employer);
- compensation to workers employed in areas of environmental disaster and radiation risk;
- compensation to employees whose employment duties are associated with extensive travelling or away from their place of domicile; and
- dismissal from office due to downsizing or liquidation of the employer.

24 Are there any special rules relating to part-time or fixed-term employees?

Fixed-term employment is allowed only when there is a need for substitution of a temporary absent employee, for the duration of a specific project or for performance of seasonal works. Also, the Labour Code recognises a one-year (and two-year with a young specialist hired for the first time) employment contract as fixed-term employment. A one-year (and two-year) employment contract is considered to have been concluded for an indefinite period if it is further extended. This rule does not apply to foreign nationals working under work permits or CEOs whose employment terms are defined in the constitutional documents of a company. Part-time employees are employed under employment contracts and are guaranteed the same duration of annual vacations as full-time employees.

Post-employment restrictive covenants

25 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

The Kazakhstan labour legislation is silent on non-compete and non-solicitation clauses. Relations not governed by the labour legislation are regulated by the Civil Code, which allows the parties to a contract to agree on such provisions. As a matter of practice, such covenants are used, but enforceability of such covenants in the courts is not yet clear.

26 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

No, there is no such obligation.

Liability for acts of employees

27 In which circumstances may an employer be held liable for the acts or conduct of its employees?

Generally, an employer is liable for damages caused by the acts of its employees if those employees were performing employment duties or acted on the instructions and under the supervision of the employer.

An employer is not liable for damages caused by the acts of its employees if an employee commits an offence that does not fall under to the employee's employment duties. Under certain circumstances, an employer may seek restitution from the employee for incurred damages.

Taxation of employees

28 What employment-related taxes are prescribed by law?

Employee remuneration is subject to income tax, mandatory pension fund contributions, social tax and social insurance contributions. Income tax and pension fund contributions are deducted from the employees' gross wages and withheld and paid to the state budget by the employer. Social tax and social insurance contributions are the responsibility of the employer. The remuneration of foreign national employees is also subject to taxation in Kazakhstan, but they are not required to make mandatory pension fund contributions.

Employee-created IP

29 Is there any legislation addressing the parties' rights with respect to employee inventions?

Employer and employee IP relations are primarily governed by the Civil Code and the Law on Copyright and Related Rights. Generally, IP created by employees as a result of performing employment duties becomes the employer's property.

Data protection

30 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Labour Code protects employee personal information. An employer's obligations with respect to employee personal information include:

- prohibition to disclose employee personal information to third parties without the employee's written consent;
- arranging access to employee personal information only to authorised persons (the employer must designate a person or persons within the organisation to be responsible for maintenance of employee personal information);
- provision of employee personal information within the employer's organisation in accordance with Law No. 94-V on Personal Data and Protection, dated 21 May 2013; and
- free of charge access for the employee to his or her personal information.

Business transfers

31 Is there any legislation to protect employees in the event of a business transfer?

Change of an employer's name, departmental affiliation (for state authorities), change of owner or reorganisation should not affect employment relations with its employees.

Termination of employment

32 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

The Labour Code provides the following exhaustive grounds (causes) for the dismissal of employees at an employer's initiative:

- the employer undergoing liquidation or ceasing entrepreneurial activity (for individuals);
- the employer downsizing personnel;
- the employee not being qualified to perform his or her duties;
- the employee not being fit to perform duties for health reasons;
- the employee displaying poor work performance during a probationary period;
- the employee being absent from work without a valid excuse for three or more consecutive hours during one workday;
- the employee being intoxicated or using substances that cause alcoholic, drug or psychoactive intoxication (or an analogous substance) during the workday;
- the employee refusing to undergo drug testing;
- the employee violating health or safety rules that caused or could have had grave consequences, such as injuries or accidents;
- the employee stealing or intentionally destroying or damaging other people's property and such actions being confirmed by a legally binding court decision;
- an action or omission by an employee who is responsible for valuables results in a loss of trust;
- immoral misconduct by an employee serving in an educational role resulting in such employee no longer being fit to serve in such role;
- the employee disclosing information that was acquired during the performance of his or her job duties and that constitutes a state secret or other legally protected information;
- the employee repeatedly failing to perform or repeatedly improperly performing work duties without a valid reason, if the employee has previously been disciplined;
- the employee's access to state secrets being terminated under grounds established by law;
- the employee knowingly submitting false documents or information to the employer when concluding the employment contract;
- the head of the executive body of the employer, his or her deputy, or the head of the department violating labour responsibilities, which caused material damage to the employer;
- the employee being absent from work for more than two months in a row due to a temporary disability, except when an employee is on maternity leave or if the disease is in the list of diseases for which a longer period of disability is provided as approved by the government of the Republic of Kazakhstan; such employee is entitled to his or her job (position) until his or her recovery is established;
- the employee committing a corrupt offence making such employee no longer fit to serve in such role; or
- the employee continuing his or her participation in a strike after a court decision declaring the strike illegal has been issued or the employee knew the strike had been suspended.

33 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Employers must give at least one month's notice prior to termination in cases of dismissal due to the employer's liquidation and downsizing of personnel, unless a longer notification period is stipulated in the employment contract or collective bargaining agreement. Dismissal may occur earlier with the employee's written consent. Compensation may be paid if there is a provision in the employment contract or collective bargaining agreement. Notice is not required with respect to termination of an employee on grounds provided in the Labour Code (see question 34).

An employment contract may provide the employer the right to dismiss an employee without notification with severance pay in an amount equal to the employee's average annual salary.

34 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Employees may be dismissed without notice in the following cases:

- the employee not being fit to perform duties due to health reasons on the basis of a certified medical report;

Update and trends

Since 2014 a set of amendments have been introduced to the Labour Code of Kazakhstan in order to support and protect the interests of young specialists who are entering the labour market for the first time. Those amendments include, among other stipulations, a fixed, minimum two-year period for an employment contract of a young specialist and no probation period.

- the employee not being qualified to perform his or her duties on the basis of a decision of an attestation commission;
- the employee being intoxicated or using substances that cause alcoholic, drug or psychoactive intoxication (or an analogous substance) during the workday;
- the employee repeatedly failing to perform or repeatedly performing work duties improperly without a valid reason, if the employee has been previously disciplined;
- the employee being absent from his or her workplace without a valid excuse for three hours or more in one workday;
- the employee violating health or safety rules that caused or could have caused grave consequences, such as injuries or accidents;
- the employee stealing or intentionally destroying or damaging other people's property and such actions being confirmed by a legally binding court decision;
- an action or omission of an employee who is responsible for valuables, which results in a loss of trust;
- immoral misconduct by an employee serving in an educational role resulting in such employee no longer being fit to serve in such role;
- the employee disclosing information that was acquired during the performance of his or her duties and that constitutes a state secret or other legally protected information;
- the employee's access to state secrets being terminated under grounds established by law;
- the employee knowingly submitting false documents or information to the employer when concluding the employment contract;
- the head of the executive body of the employer, his or her deputy, or the head of the department violating labour responsibilities, which caused material damage to the employer;
- the employee being absent from work for more than two months in a row due to a temporary disability, except when an employee is on maternity leave or if the disease is on the list of diseases for which a longer period of disability is provided as approved by the government of the Republic of Kazakhstan. Such employee is entitled to retain his or her role until his or her recovery is established;
- the employee commits a corrupt offence, making such employee no longer fit to serve in his or her role; or
- the employee continues his or her participation in a strike after a court decision declaring the strike illegal is issued or the employee knows the strike has been suspended.

35 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

An employee's right to severance pay is limited to a number of circumstances. Employees that are being dismissed on the ground of liquidation of the employer or downsizing of personnel are entitled to compensation in the amount of one average monthly salary. If the employer provided inaccurate information on labour conditions or violated labour legislation, an employment contract or a collective bargaining agreement, the affected employee is entitled to compensation in the amount of three average monthly salaries if the employment contract is terminated at the employee's initiative. However, an employment contract and collective bargaining agreement may provide for larger amounts of compensation payable for termination of employment. An employment contract may provide the employer with the right to dismiss an employee without notification with severance pay in an amount equal to the employee's average annual salary.

36 Are there any procedural requirements for dismissing an employee?

Generally, dismissing an employee is an internal matter and not reported to the authorities. When dismissing an employee who is a member of a trade union on the ground of personnel downsizing or insufficient qualifications,

a motivated opinion of such trade union is necessary for the dismissal (see question 38).

37 In what circumstances are employees protected from dismissal?

Generally, employees may only be dismissed on grounds provided in the Labour Code. However, an employer may not dismiss an employee on temporary sick leave or during his or her annual paid holidays, except where the employer is undergoing liquidation. It is also forbidden to dismiss pregnant women and women with small children under three years old, single mothers with children under 14 years old (disabled children under 18 years old) or any persons who raise such children without the mother.

Dismissal of pregnant women and such persons taking care of children is possible only in the following cases:

- the employer is undergoing liquidation;
- the employee is not qualified to perform his or her job duties;
- the employee is not capable of performing duties for health reasons;
- the employee is displaying poor work performance during the probationary period;
- the employee is absent from work without a valid excuse for three or more consecutive hours during working hours;
- the employee is intoxicated or using substances that cause alcoholic, drug or psychoactive intoxication (or an analogous substance) during working hours;
- the employee is refusing to undergo drug testing;
- the employee is violating health or safety rules that caused or could have caused grave negative consequences, such as injuries or accidents;
- the employee is stealing or intentionally destroying or damaging other people's property and such actions have been confirmed by a legally binding court decision;
- an action or omission by an employee who is responsible for money and other valuables that has resulted in the loss of trust;
- immoral misconduct by an employee in the educational sphere;
- the employee is disclosing information that was acquired during the performance of his or her job duties and that constitutes a state secret or other legally protected information;
- the employee is repeatedly failing to perform or repeatedly improperly performing work duties without a valid reason, if the employee has previously been subject to disciplinary reprimand;
- the employee's access to state secrets has been terminated under grounds established by law;
- the employee is submitting false documents or information to the employer for entering into the employment contract;
- the head of the executive body of the employer, his or her deputy, or the head of the department is violating labour responsibilities where such violation has resulted in material damage to the employer;
- the employee commits a corrupt offence that precludes, in accordance with the court decision, the possibility of further employment;
- the employee is absent from work for more than two months in a row due to a temporary disability, except when an employee is on maternity leave or if his or her disease is on the government's list of diseases for which a longer period of disability is provided; or
- the employee continues his or her participation in a strike after the issuance of a court decision declaring the strike illegal or the employee knows that the strike has been suspended.

38 Are there special rules for mass terminations or collective dismissals?

An employer is obligated to report to the labour authority the upcoming dismissal of employees in connection with its liquidation (termination of the entrepreneurial activity, if by an individual) or downsizing of personnel (namely, reporting the number and types of employee and whom it may concern, and indicating the positions and professions, specialisations, skills, and salaries or wages of employees, and the terms under which they will be released) at least two months before the contemplated dismissal.

39 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Collective actions are allowed. Collective and individual claims may be resolved through a conciliation commission, mediation commission or court hearing, as the case may be (see question 4).

40 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

While a mandatory retirement age may not be imposed by an employer, an employer's policies may provide for material incentives for employees to retire earlier. Pension benefits are paid by the government to women from the age of 58 (this threshold is being increased gradually up to the age of 63 by 2027) and to men from the age of 63.

Dispute resolution

41 May the parties agree to private arbitration of employment disputes?

Parties may agree to the private arbitration of employment disputes, provided that the employment contract or collective bargaining agreement contains an arbitration clause. In practice, almost all labour disputes are resolved in the courts.

42 May an employee agree to waive statutory and contractual rights to potential employment claims?

It is impossible for an employee to waive statutory rights in full or in part. It may be possible to waive contractual rights, but the enforcement of such waivers is not well developed.

43 What are the limitation periods for bringing employment claims?

The Labour Code states that an employee may bring a job reinstatement claim within three months of receipt of an employer's notice of termination. All other labour claims must be made within one year after the employee knew or should have known of the breach of his or her labour rights.

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Climate Regulation	Gas Regulation	Private Antitrust Litigation	Tax on Inbound Investment
Construction	Government Investigations	Private Client	Telecoms & Media
Copyright	Insurance & Reinsurance	Private Equity	Trade & Customs
Corporate Governance	Insurance Litigation	Product Liability	Trademarks
Corporate Immigration	Intellectual Property & Antitrust	Product Recall	Transfer Pricing
Cybersecurity	Investment Treaty Arbitration	Project Finance	Vertical Agreements
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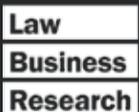
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