Labour & Employment

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GETTING THE DEAL THROUGH

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. 559 of 27 June 2016 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.

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 Labour and Social Protection 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 employees' representatives 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 safety and labour protection work council may be established by the initiative of the employer or employees (or both).

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.

5 What are their powers?

Collective bargaining agreement commission
The employees are obliged to consider and discuss the draft collective bargaining agreement prepared by the commission. The commission should revise the draft collective bargaining agreement subject to the employees' comments.

Mediation commission
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 arbitrage – an ad hoc commission that includes representatives of the employer, employees and state authorities.

Safety and labour protection work council
The council includes, on a parity basis, representatives of the employer and employees, including technical labour inspectors. The council's decision is binding on the employer and employees. The council's purposes are to:

- arrange joint actions of the employer and employees to ensure compliance with labour safety rules;
- prevent workplace injuries and occupational illness; and
- arrange for workplace inspections.

Status, rights and obligations of the technical labour inspectors, as well as their supervision procedures, are to be determined by the council's decision.

Background information on applicants

6 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). 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.

7 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 or hazardous conditions), and for certain categories of applicants (eg, employees of public food courts or children's healthcare organisations). Moreover, under the Health and Healthcare System Code, employers may not employ persons who 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.

8 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 (eg, for those who want to be employed in national security forces).

Hiring of employees

9 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 3). 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.

10 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 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;
- liabilities of the parties;
- date of the employment contract and its serial number; and
- contract with a disabled person should also include terms and conditions on equipping the workplace.

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

The general rule is that employment contracts should be valid for at least one year. A fixed-term employment contract for a period of less than one year 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 or permission of a foreign employee or foreign labour immigrant.

An expired employment contract may be extended for an undefined period or a period of not less than one year (such one-year extension may happen only twice). An employment contract with an employee of retirement age may be extended every year. An employment contract 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.

12 What is the maximum probationary period permitted by law?

The maximum probationary period is three months. However, such term may be extended up to six months for the CEO and his or her deputies, the chief accountant and his or her deputies, and heads of branches or representative offices.

13 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.

14 Is there any legislation governing temporary staffing through recruitment agencies?

No, there are no such specific regulations. Recruitment agencies may provide their services based on regular commercial service agreements.

Foreign workers

15 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 three categories of business visas depending on the purpose of entry. Within each category, single-entry and multiple-entry visas may be issued. A single entry visa is issued for 90 calendar days. Multiple-entry business visas may be issued for the maximum period of one year. Depending on the category, the duration of a foreign national's visit to Kazakhstan should not exceed 30–90 days.

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 three years or the term of the work permit.

16 Are spouses of authorised workers entitled to work?

No, spouses of authorised workers (ie, workers holding a valid work permit) are not entitled to work.

17 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$7,000 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$175, be arrested for 10 days or be deported from Kazakhstan.

18 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, as well as for most work permits. A labour market test is, however, a prerequisite to receiving a certain type of work permit (inter-corporate transfer) and subsequent work visa. The authorities will consider a work permit application if there are no local employees qualified for the vacancy. The employer is required to notify a state authority about the open position. If within 15 days no local candidates with sufficient qualifications have been found, the employer may apply for an inter-corporate transfer.

Terms of employment

19 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 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) or extended working week (Monday to Saturday) is eight hours. 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 work or working under 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, owing to its nature, cannot follow regular working-hour requirements.

20 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, disabled employees 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 daily (hourly) rate of the employee.

21 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.

22 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 or hazardous conditions: at least six additional calendar days per year; and
- disabled persons of the first and second categories: at least six calendar days per year.

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 that 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.

23 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 daily income multiplied by the number of working days during which the employee was on a sick leave.

24 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 22):

- leave without pay;
- study leave;
- maternity leave or leave for adopting a newborn child; and
- leave without pay 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 or exams, participate in training or 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 a newborn children is provided to one of the parents on the day of adoption and for 56 days after childbirth. 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.

25 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
- compensation to employees with respect to dismissal from office due to:
  - downsizing or liquidation of the employer;
  - non-compliance of employer with the terms and conditions of the employment contract; or
  - decrease of production, works and services volume that resulted in a worsening of the employer's economic conditions.

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

In general, no. The key difference is in the number of working hours only.

Post-employment restrictive covenants

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

The Labour Code supports and provides for a non-compete and non-solicitation agreement between employer and employee. The practice on enforcement of these agreements is yet to be developed.

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

No, there is no such obligation under the law. The parties may agree on such terms in a non-compete and non-solicitation agreement.

Liability for acts of employees

29 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 the employee's employment duties. Under certain circumstances, an employer may seek restitution from the employee for incurred damages.

Taxation of employees

30 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

31 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.

32 Is there any legislation protecting trade secrets and other confidential business information?

The Labour Code provides for an employee's obligation not to disclose commercial and other protected secrets that he or she learned while or as a result of performing employment duties. Under the Civil Code, an employee who breached his or her non-disclosure obligations under the employment contract should compensate the employer for any damages caused.

Data protection

33 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

34 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

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

There must be a cause for dismissal of an employee upon the employer's initiative. 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 decrease of production works and services volume that resulted in worsening the employer's economic conditions;
- the employee not being qualified to perform his or her duties as confirmed by the results of the relevant performance test;
- the employee repeatedly failing to pass the Health and Safety Executive (HSE) test if the employee is responsible for HSE in a production organisation;
- 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 competent state authority; the 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;
- 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;
- the termination of the authorities of a CEO, board member, internal auditor, or corporate secretary in accordance with the law;
- the employee reaching the retirement age;
- the employee being absent from work for more than one month for an unknown reason; or
- conversion of a part-time contract for a fixed-term contract.

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

An employer must give at least one month's notice prior to termination in case 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.

An employer must give 15 business days' prior notice of termination in the case of dismissal due to decrease of production works and services volume that resulted in worsening of the employer's economic conditions, unless a longer notification period is stipulated in the employment contract or collective bargaining agreement. With the parties' mutual agreement, the notification period may be shortened or replaced by paying salary in proportion to the notice period.

An employer must give at least one month's notice prior to termination in the case of dismissal due to the employee's reaching the retirement age.

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 37).

An employment contract may provide the employer the right to dismiss an employee under the parties' agreement without notification and with severance pay in an amount determined in the employment contract.

37 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;
- the employee not being qualified to perform his or her duties on the basis of a decision of an attestation commission;
- the employee repeatedly failing to pass the HSE test if such employee is responsible for HSE in a production organisation;
- the employee displaying poor work performance during the probation period;
- 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 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 competent authority; 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;
- 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;
- the termination of the authorities of a CEO, board member, internal auditor, or corporate secretary in accordance with the law; or
- the employee being absent from work for more than one month for unknown reasons.

38 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. An employee who is being dismissed on the ground of liquidation of the employer or downsizing of personnel or due to the employer's non-compliance with the terms and conditions of the employment contract is entitled to compensation in the amount of one average monthly salary. An employee who is being dismissed on the ground of the decrease of production, works, and services volume that has resulted in worsening of the employer's economic conditions is entitled to compensation in the amount of two average monthly salaries. An employment contract or 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 under the parties' agreement without notification and with severance pay in an amount determined in such employment contract.

39 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, a well-grounded opinion of the trade union should be taken into account, except for cases when the dismissal was caused by the liquidation of the employer.

40 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

Update and trends

On 2 February 2017, the Chamber of Entrepreneurs of Almaty issued a proposal to subject workers employed in seven specific areas of business to a verification test. The proposed test would give special certificates to those who pass it. While it has yet to be decided how exactly the results of this test will be implemented, the officials of the Chamber claim that these changes are needed because certain areas of business are overemployed, especially considering Kazakhstan's relatively low population. The verification test was designed with the goals of evaluating the level of staff professionalism; contributing to the development of the quality of human capital; and creating and upholding a high standard of product quality in the country.

In addition, the new rules on issuance of work permits for foreign citizens became effective on 1 January 2017. While these rules have abolished several obligations and procedures that employers previously needed to comply with, a new work permit fee was introduced (previously it was free). In general, these new rules are more pro-employer in comparison with previous rules.

Furthermore, in 2016, professional standards for 11 different categories of employees were adopted by the National Chamber of Entrepreneurs, with even more standards currently in development. Although these standards are more of a declarative nature, all these changes follow the pro-employer trend that started with the adoption of the new Labour Code in 2015.

Finally, on 31 January 2017, the National Chamber of Entrepreneurs reached an agreement with the Ministry of National Economy to decrease the amounts of deductions employers are required to pay as a mandatory social health insurance for employees (MSHI). In 2017 the percentage of MSHI payments made by employers will drop from 2 per cent to 1 per cent. This change is aimed at optimising the tax burden on entrepreneurs and generally continues the pro-employer trend in Kazakhstan.

on temporary sick leave or during his or her annual paid holidays, except where:

- the employer is undergoing liquidation;
- the CEO, his or her deputy, or the head of the department violated labour responsibilities, which caused material damage to the employer;
- the employee was absent from work for more than two months in a row due to temporary disability; or
- the termination of the authorities of CEO, board member, internal auditor, or corporate secretary in accordance with the law.

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 due to staff reduction or decrease of production works and services volume that resulted in worsening of the employer's economic conditions.

41 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), 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) or decreasing production works and services volume that resulted in worsening of the employer's economic conditions, at least one month before the contemplated dismissal.

42 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, labour arbitration or court hearing, as the case may be (see question 4).

43 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

44 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.

45 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.

46 What are the limitation periods for bringing employment claims?

The Labour Code states that an employee may bring a job reinstatement claim to the conciliation commission within one month of receipt of an employer's notice of termination, and the court within two months of receipt of the decision of the conciliation commission. 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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