LEXOLOGY
Getting The Deal Through

LABOUR & EMPLOYMENT 2023

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LEXOLOGY
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START READING

Kazakhstan

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LEGISLATION AND AGENCIES

Primary and secondary legislation

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;
- the Labour Code, which regulates employment and related matters as well as social partnerships, safety and the protection of labour;

- the Public Employment Law, which regulates, inter alia, foreign labour engagement and employer's social responsibilities; and
- the Normative Resolution of the Supreme Court of the Republic of Kazakhstan No. 9 on Certain Matters of Application of the Legislation While Considering Labour Disputes by the Courts, dated 6 October 2017.

There are various other laws and normative acts that regulate specific labour-related matters. For example, the Law on Migration regulates aspects of entry of foreign labour, Government Regulation No. 559 of 27 June 2016 regulates work permits issued to foreign nationals, while the Law on Mandatory Social Security regulates guaranteed payments to employees in certain cases.

A special employment regime has applied to the citizens of the member states of the Eurasian Economic Union since the Treaty on the Eurasian Economic Union was signed by Kazakhstan, Belarus and Russia on 29 May 2014. The Treaty was acceded to by Armenia in January 2015 and Kyrgyzstan in August 2015.

A special employment regime applies in the Astana International Financial Centre.

Protected employee categories

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 or 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;
    - level of physical ability;
    - race;
    - nationality;
    - language;
    - social, occupational and financial status;
    - place of residence;
    - religion;
    - political opinion;
    - clanship or social class;
    - public associations; or
    - other characteristics; and
- the right to sue for discrimination.

Enforcement agencies

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 (including its regional divisions) is responsible for the enforcement of employment statutes and regulations. Certain labour matters, such as those related to the employment of foreign nationals, may be enforced by the Ministry of Internal Affairs.

WORKER REPRESENTATION

Legal basis

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, comprising an equal number of employer and employees' representatives, is established to negotiate and draft collective bargaining agreements. Collective bargaining agreements may be initiated in local companies, and in branches and representative offices of foreign legal entities.
- A conciliation commission, comprising an equal number of employer and employees' representatives, is established to resolve individual labour disputes. If the dispute is not resolved by the conciliation commission or the decision of the conciliation commission is not implemented within the period set out in the commission's resolution, which may not exceed one month as of the date of the decision of the conciliation commission, the employees or employer, as the case may be, may apply to a court for resolution of the disputes. Subject to certain exceptions, application to the conciliation commission is mandatory before an individual labour dispute may be considered and resolved by a court.
- A mediation commission, an ad hoc body comprising an equal number of employer and employees' representatives, is established to resolve collective labour disputes (eg, an employer's compliance with labour law or a collective bargaining agreement).
- A labour arbitration, an ad hoc body comprising the representatives of an employer, employees of a single organisation and competent authority, is established if the parties do not reach a consensus through the mediation commission. Members of the mediation commission cannot be included in the labour arbitration.
- A safety and labour-protection work council, which may be established by the initiative of the employer or employees (or both).
- A labour union, which is a public association created for representing and protecting the labour and socio-economic rights and interests of its members (employees).

All of the foregoing commissions and arbitration procedures should be established on a parity basis. The number of representatives and the order and terms of operations of each

of commission are established on a case-by-case basis, subject to minimal thresholds, if applicable.

Powers of representatives

5 What are their powers?

Collective bargaining agreement commission

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

Conciliation commission

A general rule is that the conciliation commission is a mandatory pretrial primary body for the consideration of individual labour disputes between employees and employers. Certain categories of employees are not subject to this general rule. The decision of the conciliation commission must be executed within the stated term, which may not exceed one month as of the date of the decision of the conciliation commission. If the dispute is not resolved or the decision of the commission has not been executed, either party to the dispute may file a claim with the court.

Mediation commission

A duly taken resolution of the mediation commission is binding on the parties. If the mediation commission fails to reach an agreement on a collective labour dispute, the dispute may be conveyed to labour arbitration.

Labour arbitration

Labour arbitration considers collective labour disputes that were not resolved through the mediation commission. The decision resulting from labour arbitration is binding on the parties of a collective labour dispute. If a labour arbitration award is not executed within the stated term, an underlying dispute can be resolved by the court.

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
- conduct workplace inspections.

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

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Labour union

A labour union is authorised to:

- represent and protect the interests of its members;
- participate in mediation or court proceedings, labour arbitration and meetings with state authorities;
- challenge acts of state authorities infringing rights and legitimate interests of its members;
- visit the worksite to ensure normal working conditions;
- conduct negotiations (including in relation to collective bargaining agreements); and
- execute agreements and collective bargaining agreements.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

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. Applicants for employment in certain professions (or positions) must provide information on the absence of certain entries in criminal records. Security checks can be conducted if the position is security-sensitive or civil service related to the performance of functions equivalent to state functions. Hiring a third party to conduct background checks is not regulated and does not appear to be prohibited, provided that the third party conducts its activities legally.

Medical examinations

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. 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, or 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, and may terminate an employment agreement if an employee refuses to undergo a medical examination to establish if he or she uses substances that cause alcoholic, narcotic or inhalant intoxication.

Drug and alcohol testing

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 before employment (eg, for those who wish to be employed in the national security forces).

HIRING OF EMPLOYEES

Preference and discrimination

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

No. 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.

Written contracts

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

A written employment contract is mandatory. Employment contracts must contain the following:

- the parties' details:
    - for an employer (natural person):
        - last name, name and patronymic (if specified in the document certifying the identity);
        - address of the permanent place of residence and information on the registered address;
        - title, number and date of issue of the document certifying the identity; and
        - individual identification number;
    - for an employer (legal entity):
        - full name and address of the employer;
        - number and date of the state registration;
        - business identification number; and
    - for an employee:

  - last name, name and patronymic (if specified in the identification document) of the employee;
  - address of the permanent place of residence and information on the registered address;
  - title, number and date of issue of the identification document; and
  - individual identification number; and

- a job description under the specific profession or qualification;
- the workplace location (except for remote work);
- the employment contract term;
- the starting date;
- work hours and rest time;
- remuneration terms;
- a description of work conditions, and guarantees and privileges where the work is recognised as heavy or is performed under harmful or hazardous conditions;
- the rights and obligations of the employee;
- the rights and obligations of the employer;
- the procedure for the amendment and termination of the employment contract;
- liabilities of the parties;
- the date of the employment contract and its serial number;
- the terms and conditions on equipping the workplace if the employment contract is entered into with a disabled person; and
- other provisions that can be included in the employment contract upon mutual agreement of parties, provided that they do not contradict the laws of Kazakhstan.

Fixed-term contracts

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 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 the performance of seasonal work; or
- within the term of a work permit or permission for a foreign employee or foreign labour immigrant.

One-year fixed-term rules do not apply to small business enterprises.

An expired employment contract may be extended for an undefined period or a period of not less than one year (such a one-year extension may happen only twice, except for small business enterprises that are not limited in the number of extensions). An employment contract with an employee of retirement age can be extended every year without the above-mentioned limitation. An employment contract with the executive body of a legal entity (eg, a chief executive officer 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.

Probationary period

12 What is the maximum probationary period permitted by law?

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

Classification as contractor or employee

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

An independent contractor's work is governed by civil law contract rules (eg, a service agreement). An independent contractor is free to determine and agree upon the terms and conditions of his or her 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 monthly regardless of the results of their work; and
- must comply with internal labour policies.

The above are distinctive features of the employment relationships prescribed by the Labour Code. However, such criteria were further expanded by recent case law from the Supreme Court of Kazakhstan, including, inter alia, that:

- the received remuneration constitutes the employee's sole or principal source of income;
- the work involves integration of the employee in the organisation of the employing party and the results (ie, deliverables) of such work is critical for (or an integral part of) the business operation of the employing party to the extent that such an operation would not be possible in light of, or would be substantially prevented by, the absence of the employee's delivery of in-person results; and
- the work is performed with inventory, machinery or other tools provided by the employing party.

One of the most striking examples of the aforesaid case law is the Supreme Court Resolution dated 26 October 2021 in the administrative case of *Ospan vs Sarbasov*.

Independent contractors can be subject to, depending on the terms and conditions of the relevant service agreement, material (commercial) liabilities for undue provision of services. Independent contractors are not entitled to compensation payments or minimum paid vacation. The agreement termination process is also different.

Temporary agency staffing

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

Recruitment agencies (or staff providers) can provide their services based on regular commercial outsourcing agreements. Temporary staffing is regulated by the Labour Code based on the following principles:

- outsourced staff are hired via a third party (eg, a recruitment agency or staff provider) based on the relevant outsourcing agreement;
- an employment agreement is concluded between the recruitment agency or staff provider and the individual employee;
- accepting outsourced staff does not exempt the staff-accepting party from complying with the mandatory requirements of the Labour Code (eg, ensuring safe work conditions; compliance with health, safety and environment rules; or recording or payment of work time and overtime work);
- the act of outsourcing implies hiring only for performance of a specific quantity of work or project implementation;
- there must be no discrimination as to wages between outsourced staff and in-house employees; and
- the recruitment agency or staff provider must mandatorily take out insurance for outsourced staff, taking into account the staff-accepting party's business risks.

FOREIGN WORKERS

Visas

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 business visa for a conference or concert performance may be given for a single entry only). A single-entry visa is issued for 90 calendar days. Multiple-entry business visas may be issued for a maximum of 180 calendar days or one year, depending on the category. Depending on the category, the duration of a foreign national's visit to Kazakhstan should not exceed 30 to 90 days.

Work visas are issued to foreign nationals travelling to Kazakhstan for a term of up to three years. There are four categories of work visas depending on the foreign national's purpose of entry and their immigration category. Work visas similar to business visas can be issued for a single entry or multiple entries, depending on the category. A single-entry work visa is issued for 90 calendar days. Multiple-entry work visas may be issued for a maximum of one to three years, depending on the category (five years for participants or bodies of the Astana

International Financial Centre and employees, or employees of shareholders of the Astana Hub, which is an international technology park for information technology start-ups).

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 based on a work permit (in some cases, it can be based on a certificate of qualification for self-recruitment) for a term of up to three years or the term of the work permit.

Spouses

16 | Are spouses of authorised workers entitled to work?

Spouses of authorised workers (ie, workers holding a valid work permit) are not entitled to work.

General rules

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

A Kazakhstan employer may employ foreign nationals based on a validly issued work permit. The number of issued work permits may not exceed the 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 the work permit requirements. Obtaining 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 for which the maximum fine that can be imposed upon an employer is approximately 2.415 million tenges. Foreign nationals illegally residing in Kazakhstan and engaged in labour activity without the required work permit may be fined up to approximately 86,250 tenges, held under arrest for 10 days or deported from Kazakhstan.

A person may also be hired for certain economic priority sectors (eg, operations with immovable property, education, transport or communications) based on a certificate of qualification for self-recruitment. To receive such a certificate, the foreign person must submit a set of required documents to an authorised body and meet the standards related to the level of education and work experience.

Resident labour market test

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, or most work permits.

A labour market test is, however, a prerequisite to receiving a work permit for an 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, provided that the relevant candidate meets certain requirements.

TERMS OF EMPLOYMENT

Working hours

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 apply to employees who are 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 work under harmful or hazardous conditions, and for certain disabled employees, 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).

Employees under 18 years old and pregnant employees who have provided proof of pregnancy are not allowed to work at night (from 10pm until 6am).

Overtime work should not exceed two hours per day for each employee, or one hour per day 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 per month and 120 hours per 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.

Overtime pay – entitlement and calculation

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

Workers engaged in overtime work are entitled to overtime pay. Pregnant employees who have provided proof of pregnancy, disabled employees and employees younger than 18 years old cannot engage in overtime work. The Labour Code sets minimum rates for overtime

pay, which can be increased by employment contracts or collective bargaining agreements. The calculation of overtime pay depends on the payroll system established by the employer; however, overtime pay must be at least 50 per cent of (for piecework), or one-and-a-half times (for other work), the daily or hourly rate of the employee.

Overtime pay – contractual waiver

21 | Can employees contractually waive the right to overtime pay?

The Labour Code provisions concerning overtime pay are mandatory, so a contractual waiver of the right to overtime pay can be viewed as a violation of an employee's rights. Such a waiver may result in the administrative liability of the employer in an amount of up to approximately 414,000 tenges. At the same time, the Labour Code explicitly allows the parties to agree that, for one hour of overtime, the employee will be granted at least one hour of rest.

Vacation and holidays

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

Articles 87 and 88 of the Labour Code establish the employee's rights to annual paid vacation. The minimum amount of annual paid vacation is 24 calendar days. A greater number of days can be provided under other laws or regulations, employment contracts or collective bargaining agreements, or voluntarily by an employer.

Additional paid vacation days must be provided to:

- employees engaged in dangerous work, or working under harmful or hazardous conditions (at least six additional calendar days per year); and
- disabled employees of the first and second categories (at least six calendar days per year).

Disability category is determined in accordance with the Rules of Medical and Social Assessment approved by Order No. 44 of the Minister of Healthcare and Social Development, dated 30 January 2015.

Additional paid vacation can also be provided under applicable legislation to other categories of employees (eg, blood or organ donors and professional members of the emergency services).

Annual paid vacation accrues at a rate of 1/12 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 entitlement, additional paid vacation must be added to the mandatory annual paid vacation entitlement. Upon agreement between the employer and employee, annual paid vacation can be divided into parts and one part must be at least 14 days long.

There are 12 public holidays per year.

Sick leave and sick pay

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

Pursuant to the Labour Code (eg, articles 54.1, 58.3 and 133) 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 for more than two months is grounds for termination of employment unless the leave is due to an illness or illnesses for which a longer duration of sick leave is allowed under the law. The level of sick pay is determined based on the employee's average daily income multiplied by the number of working days during which the employee is on sick leave.

Leave of absence

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 the following types of leave of absence in addition to annual vacation:

- 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, the birth of a child and the 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, or participate in military training programmes. Study leave pay is determined by an employment contract, a collective bargaining agreement or a training contract. An employer must secure a job for an employee who is studying abroad and who is a recipient of the Bolashak International Scholarship. The scholarship is awarded to high-performing students in Kazakhstan so that they may study overseas with all expenses paid, subject to the student returning to work in Kazakhstan for at least five years following his or her graduation.

Generally, maternity leave commences 70 calendar days before the expected date of childbirth and ends 56 calendar days after childbirth (70 days before and after childbirth in the case of multiple births or post-birth complications). Depending on the residence conditions of the female employee, delivery date and weight of the child, the terms of maternity leave can be increased to 91 calendar days before and 93 calendar days after childbirth.

Leave for the adoption of a newborn child is provided to one of the new adoptive parents on the day of adoption and for 56 days after childbirth. During maternity leave or leave for adopting a newborn child, the new adoptive parent receives social parental pay from the government, and the employer is required to make up the difference between the social

parental pay and the employee's average net compensation if such an obligation is provided for in the employment contract or a collective bargaining agreement.

Leave for taking care of a child under three years old is provided to one of the child's parents and is not paid by the employer. An employee may use parental leave, in full or in parts, until the child reaches the age of three.

Mandatory employee benefits

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, which comprise contingencies such as disability, survivorship, job loss, pregnancy and childbirth, adoption of newborn children, and taking care of a child younger than one year of age;
- occupational accident 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 are away from their place of domicile; and
- compensation to employees concerning dismissal from office owing to:
    - downsizing or liquidation of the employer;
    - the employer's non-compliance with the terms and conditions of the employment contract; or
    - decreased production output, work or services that resulted in the worsening of the employer's economic conditions.

Part-time and fixed-term employees

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

In the event that a person is employed by more than one employer, the aggregate duration of daily work at the worker's primary place of employment and the place of part-time employment must not exceed the maximum duration of daily work (ie, eight hours under the general rule) by more than four hours.

A part-time employment contract can be terminated by the employer if it intends to enter into a fixed-term employment contract with a different person, for whom the position will be his or her primary place of employment.

Annual paid vacation is provided to part-time employees, along with annual paid vacation provided by their primary place of employment.

Public disclosures

27 Must employers publish information on pay or other details about employees or the general workforce?

Every employer must disclose certain information about every employment contract (eg, the date of signing, change, cancellation, duration and registration number of the contract, employer and employee identification numbers, and the employee's job position) through the electronic system supported by the government. Disclosure of such information is subject to personal data transfer restrictions (eg, the employee's written consent).

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

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

The Labour Code supports and provides for non-compete and non-solicitation agreements between employers and employees whereby the employee undertakes not to take any action that could cause damage to the employer. The practice of enforcement of these agreements has yet to be developed and decisions of the courts vary case by case. Following the language of law and available court precedents, the mere fact that an employee is being employed by another employer or a competitor does not mean that the employee has breached a non-compete agreement with the former employer. To prove the breach of the non-compete agreement, the courts require submission of proof of actual damages (eg, owing to the disclosure of a commercial secret) caused to the former employer as a result of the employee's new employment arrangements.

Post-employment payments

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

No. The parties may agree on such terms in a non-compete or non-solicitation agreement.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

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

Generally, the 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 recovery from the employee for incurred damages.

TAXATION OF EMPLOYEES

Applicable taxes

31 What employment-related taxes are prescribed by law?

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

EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION

Ownership rights

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

Employer and employee intellectual property relations are primarily governed by the Civil Code and the Law on Copyright and Related Rights. Generally, intellectual property created by employees as a result of performing their employment duties becomes the employer's property, unless otherwise stipulated in the employment contract between them.

Trade secrets and confidential information

33 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 breaches his or her non-disclosure obligations under the employment contract should compensate the employer for any damage caused.

DATA PROTECTION

Rules and employer obligations

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

The Labour Code and the Law on Personal Data Protection protect an employee's personal information. An employer (as the owner or operator of a database containing personal data) must, inter alia:

- approve a list of the personal data necessary and sufficient for the performance of its activity;
- take and comply with necessary measures (including legal, organisational and technical) to protect personal data;
- take measures to destroy personal data once the purpose of collecting and processing such data has been met;
- collect and keep evidence confirming receipt of the employee's consent to collect and process his or her personal data;
- provide information related to the employee within three business days of his or her (or his or her representative's) request; and
- keep records of any actions pertaining to transfers to third parties, cross-border transfers and distribution of personal data in public sources.

Privacy notices

35 Do employers need to provide privacy notices or similar information notices to employees and candidates?

Under the Law on Personal Data Protection, an employer (as the owner or operator of a database containing personal data must receive proper consent from employees or candidates for employment to collect and process their personal data. The consent must specify:

- the full name of the data subject;
- the consent term;
- a list of collectable personal data;
- information on the employer's rights (or absence thereof) to transfer personal data to third parties, to conduct cross-border transfers or to distribute personal data through public sources; and
- other information as determined by the employer.

The purpose of the data processing is determined by the employer. Data processing must always correspond to the established purpose. Processing of excessive data is prohibited.

The employer must inform the employee of an authorised transfer of his or her personal data to a third party if such an obligation is provided in the relevant consent or other data processing documentation.

Employee data privacy rights

36 What data privacy rights can employees exercise against employers?

An employee has the right to, inter alia:

- be aware that the employer, as well as any third party, has his or her personal data;
- be notified of each case in which his or her personal data is transferred to a third party (if such a notification condition is agreed upon by the parties or set by law);
- demand that the employer amend his or her personal data, if required and confirmed by relevant documents;
- withdraw his or her consent for collection and processing, including transfers to a third party, cross-border transfers or the distribution of his or her personal data through public sources, except in certain cases; and
- protect his or her rights and interests, including demanding compensation for moral and material damages.

BUSINESS TRANSFERS

Employee protections

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

Changes of the employer's name, departmental affiliation (for state authorities) or owner, or its reorganisation, should not affect employment relationships with employees.

TERMINATION OF EMPLOYMENT

Grounds for termination

38 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 cause for the dismissal of an employee by an employer. The Labour Code provides the following exhaustive grounds for the dismissal of employees by the employer:

- the employer undergoing liquidation or ceasing entrepreneurial activity (for natural persons);
- the employer downsizing its workforce;
- the decrease of production output, works or services that resulted in the worsening of the employer's economic conditions;
- the employee not being qualified to perform his or her duties as confirmed by the results of a relevant performance test;
- the employee does not comply with requirements for professional activity set by law (eg, the position of a security guard in a private security company);

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- the employee repeatedly failing to pass the health and safety test if he or she is responsible for health and safety matters in a production organisation;
- the employee's certificate of appraiser qualification being terminated;
- the employee not being fit to perform his or her duties for health reasons;
- the employee displaying poor work performance during his or her 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 uses 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 in a way that had 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 being committed by an employee who is responsible for valuables, or an employee who uses his or her position in his or her own interests or in the interests of a third party contrary to the interests of the employer in return for obtaining material or other benefits, resulting in a loss of trust;
- immoral conduct being committed by an employee serving in an educational role, resulting in such an employee no longer being fit to serve in such a role;
- the employee disclosing information that was acquired during the performance of his or her job duties 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 he or she has previously been disciplined;
- the employee's access to state secrets being terminated on the grounds established by law;
- the employee knowingly submitting false documents or information to the employer when concluding the employment contract or for the transfer to another job, provided that, if legitimate documents have been submitted, the employment or transfer would have been impossible;
- the head of the executive body of the employer, his or her deputy, or the head of the department or branch (representative office) violating labour responsibilities, causing material damage to the employer;
- the employee being absent from work for more than two consecutive months owing to a temporary illness, except when the employee is on maternity leave or if the illness is on the list of illnesses for which a longer period of leave is provided, as approved by the competent state authority (the employee is entitled to retain his or her position until his or her recovery is established);
- the employee committing a corruption offence, making him or her no longer fit to serve in the 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 knows the strike has been suspended;
- the authority of a chief executive, board member, internal auditor or corporate secretary being terminated early by law;
- the employee reaching retirement age;
- the employee being absent from work for more than one month for unknown reasons;
- a part-time contract being converted to a fixed-term contract;

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- the chief executive officer, his or her deputy, or a member of the executive body of the quasi-public entity having foreign citizenship; or
- the employee of a quasi-public entity committing a corruption offence.

Notice requirements

39 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 before termination in the case of dismissal owing to the employer's liquidation and downsizing of the workforce 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 of prior notice of termination in the case of a dismissal owing to a decrease in production output, work or services that resulted in the 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 a salary amount in proportion to the notice period.

An employer must give at least one month's notice before termination in the case of a dismissal owing to the employee reaching retirement age. Compensation may be paid if there is a provision in the employment contract or collective bargaining agreement.

In the case of a mutual agreement on termination of employment, the relevant party (either employee or employer) must notify the other party. The notified party must return with a response in writing within three business days.

Dismissal without notice

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

Employees may be dismissed without notice if the employee:

- is not fit to perform his or her duties owing to health reasons based on a certified medical report;
- is not qualified to perform his or her duties based on a decision of an attestation commission;
- repeatedly fails to pass the health and safety test (if he or she is responsible for health and safety matters in a production organisation based on the decision of an examining commission);
- displays poor work performance during his or her probationary period;
- is intoxicated, or uses substances that cause alcoholic, drug or psychoactive intoxication (or an analogous substance) during the workday (in which case, the termination must be carried out in compliance with the procedure for applying disciplinary sanctions and be based on medical findings);

- refuses to undergo drug testing (in which case, the termination must be carried out in compliance with the procedure for applying disciplinary sanctions and be confirmed by the employee's refusal to undergo drug testing);
- repeatedly fails to perform, or repeatedly performs, work duties improperly without a valid reason (if he or she has been previously disciplined, in which case the termination must be carried out in compliance with the procedure for applying disciplinary sanctions);
- is absent from his or her workplace without a valid excuse for three hours or more in one workday (in which case, the termination must be carried out in compliance with the procedure for applying disciplinary sanctions);
- violates health or safety rules in a way that had or could have had grave consequences, such as injuries or accidents (in which case, the termination must be carried out in compliance with the procedure for applying disciplinary sanctions);
- steals, or intentionally destroys or damages, other people's property and such actions are confirmed by a legally binding court decision (in which case, the termination must be carried out in compliance with the procedure for applying disciplinary sanctions);
- commits an action or omission, or uses his or her position in his or her own interests or in the interest of a third party contrary to the interests of the employer in return for obtaining material or another benefit, that results in a loss of trust (must be based on an internal investigation);
- commits immoral conduct while serving in an educational role, resulting in him or her no longer being fit to serve in such a role (in which case, the termination must be carried out in compliance with the procedure for applying disciplinary sanctions);
- discloses information that was acquired during the performance of his or her duties that constitutes a state secret or other legally protected information (in which case, the termination must be carried out in compliance with the procedure for applying disciplinary sanctions);
- has his or her access to state secrets terminated on the grounds established by law;
- knowingly submits false documents or information to his or her employer when concluding the employment contract or to transfer to another job provided that, if legitimate documents had been submitted, the employment or transfer would have been impossible (in which case, the termination must be carried out in compliance with the procedure for applying disciplinary sanctions)
- is the head of the executive body of the employer, his or her deputy, or the head of the department or branch (representative office) and violates labour responsibilities, causing material damage to the employer (in which case, the termination must be carried out in compliance with the procedure for applying disciplinary sanctions);
- is absent from work for more than two consecutive months owing to a temporary disability, except when the employee is on maternity leave or if his or her illness is on the list of illnesses for which a longer period of leave is provided as approved by the competent authority (the employee is entitled to retain his or her role until his or her recovery is established) based on a certificate of temporary incapacity to work;
- commits a corruption offence, making him or her no longer fit to serve in his or her role;
- 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;
- is subject to the termination of the authority of a chief executive officer, board member, internal auditor or corporate secretary by law; or
- is absent from work for more than one month for unknown reasons, provided that the employee fails to provide information concerning the reasons for his or her absence

within 10 calendar days of the date on which the employer notifies the employee of his or her absence.

Severance pay

41 | 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 several circumstances.

An employee who is dismissed on the grounds of liquidation of the employer, downsizing of the workforce or 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 payment.

An employee who is being dismissed on the grounds of a decrease in production output, work or services that resulted in the worsening of the employer's economic condition is entitled to compensation in the amount of two average monthly salary payments.

An employment contract or a collective bargaining agreement may provide for larger amounts of compensation payable for termination of employment.

Procedure

42 | Are there any procedural requirements for dismissing an employee?

Generally, dismissing an employee is an internal matter and is not reported to the authorities, except in cases when the dismissal takes place owing to the employer's liquidation, ceasing of entrepreneurial activity, downsizing of the workforce, or a decrease in production output, work or services that results in the worsening of the employer's economic condition. In such cases, notification to job centres one month prior is required.

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 in cases when the dismissal was caused by the liquidation of the employer. In such cases, the employer will be required to serve the relevant termination notice to employees at least one month prior to the proposed termination date unless another, longer notification period is stipulated in employees' employment contracts or a collective bargaining agreement.

Employee protections

43 | In what circumstances are employees protected from dismissal?

Generally, employees may only be dismissed on grounds explicitly provided in the Labour Code. An employer may not dismiss an employee on temporary sick leave or during his or her annual paid vacation, except where:

- the employer is undergoing liquidation;

- the chief executive officer, his or her deputy, or the head of the department or branch (representative office) violated labour responsibilities, which caused material damage to the employer;
- the employee was absent from work for more than two consecutive months owing to a temporary disability; or
- the termination of the authority of a chief executive officer, board member, internal auditor or corporate secretary by law.

It is also forbidden to dismiss pregnant employees, female employees with children younger than three years old, employees who are single mothers of children younger than 14 years old (or disabled children younger than 18 years old), or any employees who raise orphaned children owing to staff reduction or a decrease in production output, work or services that resulted in the worsening of the employer's economic conditions.

Mass terminations and collective dismissals

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

An employer is obliged to report to an employment centre, at least one month before the dismissal, the upcoming dismissal of employees in connection with:

- its liquidation (or termination of the entrepreneurial activity, if by a natural person);
- downsizing of the workforce (namely, reporting the number and types of employees as well as 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); and
- a decrease in production output, work or services that resulted in the worsening of the employer's economic condition.

Class and collective actions

45 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 can be resolved through a conciliation commission, a mediation commission, labour arbitration or the courts, as the case may be.

Mandatory retirement age

46 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 employers, an employer's policies may provide material incentives for employees to retire earlier. In 2023, pension benefits are paid by the government to women from the age of 61 (this threshold is being gradually raised to the age of 63 by 2031) and to men from the age of 63.

DISPUTE RESOLUTION

Arbitration

47 | May the parties agree to private arbitration of employment disputes?

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

Employee waiver of rights

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

An employee cannot waive his or her 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 and, therefore, remains questionable.

Limitation period

49 | 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 to court within two months of receipt of the decision of the conciliation commission. All other labour claims can be made within one year of when the employee becomes aware or should have become aware of the breach of his or her labour rights.

UPDATE AND TRENDS

Key developments and emerging trends

50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

Law No. 199-VII of 15 February 2023 introduced important amendments to the Labour Code, aimed at the facilitation of dispute resolution by conciliation commissions as permanent dispute settlement bodies through methods such as enforcing the decisions taken by such commissions.

Pursuant to the amendments, the Labour Code now provides for, inter alia:

- mandatory provisions to be included in the agreement on the conciliation commission's work procedure;
- the employee's or former employee's right to relinquish his or her claims before the conciliation commission announces its decision on the case;

- meetings of the conciliation commissions to be held remotely, subject to the mandatory recording of such meetings by the employer;
- requirements as to the quorum for decision-making by the conciliation commission;
- requirements as to the content of the decision of the conciliation commission;
- the maximum term, which is one month as of the conciliation commission's decision date for the voluntary execution of such a decision, except in employee reinstatement cases;
- the deadlines for payment of the amounts adjudicated by the conciliation commission to the employee; and
- guarantees for members of the conciliation commission pursuant to which, during dispute consideration, such members are released from the performance of their job duties but maintain the right to receive their normal salaries.

These amendments will come into effect on 18 April 2023.

Another block of amendments to the Labour Code, dated 27 June 2022, is aimed at improving the employment status and work conditions of disabled employees and employees who are raising disabled children. Notably, Amendments Law No. 129-VII, which entered into legal force on 8 July 2022, introduced the following changes to the Labour Code:

- labour contracts concluded with a disabled person must contain, inter alia, conditions regarding the workplace equipment for a disabled employee, taking into account his or her individual capabilities and needs;
- weekly working hours for disabled employees of the first and second categories must not exceed 36 hours;
- night work by disabled employees is permitted only subject to the employee's written consent and provided that night work is not prohibited for health reasons, as confirmed by the relevant medical report;
- night work by an employee who is raising a disabled child or children younger than 18 years of age is subject to the employee's written consent;
- overtime work by disabled employees is prohibited irrespective of his or her disability category; and
- sending a disabled employee on a business trip is permitted only if such a trip is not prohibited by the relevant medical report (in any event, such employees as well as employees who are raising disabled children have the right to refuse to go on a business trip).

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