

## LATEST AMENDMENTS TO THE LABOR LEGISLATION

On 19 and 20 April 2023, Kazakhstan introduced extensive amendments into legislation, which also affected the issues of labor relations and social protection<sup>1</sup>. Major part of such amendments will enter into force starting 1 July 2023, while some of them will become effective since 1 May 2023. The key legislative amendments in these spheres relate to the following issues.

### ■ Changes in the sphere of labor relations:

- Kazakhstan introduces a new concept of "joint employment", which means labor relations of several employees with a purpose of joint performance of the same labor function (work in a certain specialty, profession, qualification or position) with the same employer in a situation where the employees perform labor duties during the working hours in accordance with the employer's acts and an employment contract.

Joint employment is allowed in case of mutual agreement of the parties with respect to the employees taking care of a sick family member in accordance with a medical opinion, one of the parents (adoptive parent) with a child (children) under the age of 3, single mothers raising children under the age of 14 (disabled children under the age of 18), other persons raising the said category of children without a mother, students who perform the work, which does not cause harm to health or impede the educational process, during the non-study hours, employees who have less than 2 years until reaching the age of retirement established by the Social Code of the Republic of Kazakhstan or who have already reached the said retirement age.

When applying joint employment, the normal number of working hours for the employees based on the working hours balance for a relevant calendar year decreases accordingly. At the same time, work under the part time working conditions does not entail any limitations for an employee with respect to duration of the paid annual labor leave, calculation of the years of labor experience and other rights in the labor sphere. In case of joint employment, it is allowed to apply the hourly based payment rates.

- Kazakhstan introduces the possibility to apply a four-day working week with the right to make it interchangeable with a five-day or six-day working week.
- There are exceptions from the general rule prohibiting to engage an employee to perform work within 2 consecutive shifts, specifically, an employee may be engaged to work more than 2 consecutive shifts in case of prevention of emergencies, natural calamities or industrial accidents, or immediate emergency treatment operations; prevent from and investigate the work-related accidents, property loss or damage; perform urgent work, which was not forecasted in advance, prompt performance of which affects further normal operation of an organization in general or its certain subdivisions.

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<sup>1</sup> Social Code No. 224-VII of the Republic of Kazakhstan dated 20 April 2023; Law No. 226-VII of the Republic of Kazakhstan "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Social Security" dated 20 April 2023; Law No. 223-VII of the Republic of Kazakhstan "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on the Issues of the Administrative Reform in the Republic of Kazakhstan" dated 19 April 2023.

- Kazakhstan introduces an additional work regime called the "variable working hours" (work on different days of a week with different duration of work in complying with the restriction on the daily worktime duration of no more than 11 hours and applying the cumulative worktime accounting), which may be stipulated by an employing company subject to the work specifics. In case of variable working hours, the record period may be a period of no more than 1 quarter. When working under the variable working hours regime, the beginning, the end, or the total duration of a workday (shift) must be determined by the internal labor regulations, employment contract or a shift schedule.
  - The overtime limits were adjusted. The values (no more than 12 hours/month and 120 hours/year) remained the same, but with a clarification that such limits apply only in case of establishing the cumulative worktime accounting.
  - From now on, the list of data introduced by employers into the UASEC includes information regarding maternity leaves and childcare leaves (until a child reaches the age of 3).
  - The amount of social temporary incapacity allowance is now determined directly in the Labor Code (it was previously determined by the Government of the Republic of Kazakhstan). It was increased from 15 MCI to 25 MCI per a month, except for the amounts of allowances paid to employees in connection with a labor injury or an occupational disease (in which case the allowance is 100% of an average salary), working veterans of the Great Patriotic War, veterans whose allowances are deemed equal to allowances of the veterans of the Great Patriotic War and veterans of combat operations in other countries (in which case the allowance is 100% of salary). The employers may provide for other payments to employees in addition to the social temporary incapacity allowance.
  - It is now possible to extend the threshold terms of rotations (15, 30 or 120 days, depending on a category of employees) during the period of the state of emergency or martial law, declaring an emergency situation, and to prevent from emergencies, natural calamities or industrial accidents, or for immediate emergency treatment operations, or in case of other restrictive measures, including a quarantine, if so resolved by the governmental agencies or their officials, and in other exceptional cases posing threat to life or health of employees. An employer may increase the duration of a rotation shift until elimination of the above cases in complying with the established worktime duration by a relevant employer's act.
  - From now on, the Labor Code contains specific information pertaining to regulation of the labor of employees hired by individual entrepreneurs or legal entities carrying out activities applying the Internet platforms and/or the platform employment mobile applications. An employment contract between such employee and an employer is entered into for a definite term and may be less than one year. For the employees carrying out labor activities using the Internet platforms and/or platform employment mobile applications it is possible to establish other duration of daily work (work shift); labor remuneration system and payment conditions, worktime duration and accounting procedures for such employees are established in accordance with the employer's acts, collective bargaining agreement or an employment contract.
- **Changes in the sphere of foreign labor engagement:**
- In light of the fact that a number of laws will lose their force starting 1 July 2023, including the Law on Population Employment of 6 April 2016, in connection with the adoption of the Social Code, all key provisions relating to the foreign labor engagement procedure contained in this regulatory legal act were transferred to the

Law on Population Migration of 22 July 2011. In general, the transferred legislative provisions remain the same and do not contain any crucial changes.

- The Labor Code clarifies that a foreigner must have a temporary medical insurance contract covering primary medical care and specialized inpatient medical care in case of emergency on the basis of the conditions established by the laws of the Republic of Kazakhstan. Starting 1 May 2023, in case of absence of such insurance contract, no employment contract can be entered into with a foreigner.

#### ■ **Social Code:**

This code united regulation in the sphere of social protection of population, assistance with employment and pension security, which was previously ensured at the legislative level. The following laws lost their force in connection with the adoption of the Social Code: Law on State Social Disability and Breadwinner Death Allowances in the Republic of Kazakhstan, Law on Special State Allowance in the Republic of Kazakhstan, Law on State Targeted Social Support, Law on Social Protection of Disabled Persons in the Republic of Kazakhstan, Law on State Allowances to Families with Children, Law on Special Social Services, Law on Pension Security in the Republic of Kazakhstan, Law on Population Employment, and the Law on Mandatory Social Insurance. Accordingly, an employer will have to keep in mind the rules of the new code at least when resolving the issues with retirement of employees, making of pension and other social contributions, performing obligations on social insurance of employees, and obligations on ensuring population employment and social protection of disabled persons.

Should you have any additional questions in connection with this Legal Update, we would be happy to provide more detailed information.

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