

27 November 2015

To our clients and friends

INFORMATION MEMORANDUM

New Labor Code of the Republic of Kazakhstan

The new *Labor Code of the Republic of Kazakhstan*¹ ("**Code**") will be put into effect starting 1 January 2016.

1. General Evaluation

The new Code is, indeed, an improved version of the Labor Code dated 2007. It is concise and well structured; it contains significant novelties and eliminates certain drawbacks of the current code.

At the same time, the Code preserves a number of system regulation problems and gives rise to new issues.

2. Novelties

The following key innovations would be of interest to employers:

- possibility to enter into a *non-competition agreement* limiting the employee's rights to perform actions, which may cause damages to an employer;
- *secondment*, which is, however, significantly limited in respect of the number of parties involved;
- new grounds for the *employment agreement termination*, which include transfer of an employee to another employer, worsening of economic conditions, violation of labor duties by a head of a structural subdivision, employee's absence at work for more than 1 month due to unknown reasons and others. Some of the above grounds are complicated with a necessity to apply special procedure, which may "bring to nothing" their advantages;
- possibility to define in an employment agreement *any amount of compensation to an employee in case of terminating employment agreement by agreement of the parties* without the employer's compliance with the procedure for coordinating such termination. Currently such compensation may not be less than an average annual salary;
- new grounds for *withholdings from employee's salary* (including in case of transferring or recalling from leave; to return unworked advance payment or unspent money given out in connection with a business trip);
- possibility to establish a *probation period up to 6 months* for the heads, chief accountants and their deputies, heads of branches and representative offices;

¹ Labor Code No. 414-V of the Republic of Kazakhstan dated 23 November 2015, published in the *Kazakhstanskaya Pravda* newspaper No. 226 (28102) dated 25 November 2015.



- expanded list of *employer's acts* (the Code adds the rules, shift, rotation and leave schedules);
- absence of a necessity to coordinate employer's acts with the employees' representatives, unless otherwise established by a collective agreement or social partnership agreement;
- cancellation of special requirements to hiring of young specialists and possibility to engage students to production practice under a dual training agreement.

3. Complexities

Please note that, from now on, salary is to be not only paid, but *defined in tenge* as well. This issue was previously disputable.

Problems with the election of the *employees' representatives* remain the same. Moreover, they are now of greater importance in connection with introducing mandatory (with some exceptions) pre-trial resolution of individual labor disputes by *grievance commissions*. Even now it is clear that the grievance commission creation and operation mechanism provided for in the Code will entail a great number of complexities and new issues for both employers and employees. The state shifted the burden of labor disputes on to the shoulders of the parties in a dispute, which not always possess even the fundamentals of the labor legislation (the Code prescribes to teach the grievance commission members to such fundamentals on an annual basis).

Foreign labor engagement procedure will be amended.

4. Other Amendments

Concurrently with putting the Code into effect the following laws are also being amended²:

- *Administrative Code of the Republic of Kazakhstan* (increases fines in respect of employers for admission to work without entering into employment agreement and for violating labor remuneration requirements and statutory requirements to entering into a collective contract and agreement);
- *Law of the Republic of Kazakhstan "On Population Employment" dated 23 January 2001* (makes more specific the state guarantees to citizens in the population employment sphere; the period for notifying employment agencies regarding staff reduction is reduced to 1 month and now there are more cases requiring such notification);
- *Law of the Republic of Kazakhstan "On Mandatory Insurance of Employees against Accidents in the Course of Performance of Labor (Official) Duties" dated 7 February 2005* (makes more specific the set of documents to be submitted for insurance payment);
- *Law of the Republic of Kazakhstan "On Social Protection of Disabled Persons in the Republic of Kazakhstan" dated 13 April 2005* (specifies work time duration for disabled persons of I and II groups);
- *Law of the Republic of Kazakhstan "On the National Chamber of Entrepreneurs of the Republic of Kazakhstan" dated 4 July 2013* (the competence of the National Chamber of Entrepreneurs now includes the approval of professional labor norms, rules and standards);

² Please see the Law No. 415-V of the Republic of Kazakhstan "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on Labor Regulation Issues" dated 23 November 2015, published in the *Kazakhstanskaya Pravda* newspaper No. 226 (28102) dated 25 November 2015.

- *Law of the Republic of Kazakhstan "On Trade Unions" dated 27 June 2014* (makes more specific the competence of trade unions and procedure for "dismissal" of the members of elective trade union bodies).

5. Actions to be Performed by Employers

The new legal regulation requires adjustment of the employer's labor documentation or drafting of the new forms of the documents significant for the fulfillment of the Code's requirements.

Specifically, it is necessary to check and adjust the employer's acts (internal regulations, labor remuneration regulations, etc.) in accordance with the new Code. We would recommend introducing amendments into the employment agreements with the current employees, since the adopted Code provides for some of the employer's obligations, beside other important amendments, to become the employer's rights.

The secondment will require a special set of documents, and introduction of the non-competition condition – a separate agreement, but not an obligation in an employment agreement, as it is currently often made in practice.

For the purposes of resolving individual labor disputes in accordance with the updated procedure, it will be necessary to enter into an agreement between an employer and employees' representatives on the grievance commission establishment, defining in such agreement the quantitative composition of the commission, term of its powers, content and procedure for adopting resolutions, and the issues of involving an intermediate party.

AEQUITAS has already started drafting new employment agreements and other key documents subject to the accumulated experience. We would be happy to enter the age of the new labor legislation together with you.

Best regards,
AEQUITAS Law Firm