

13 January 2015

To our clients and friends

INFORMATION LETTER

regarding liability for violation of the labor legislation in the context of the new Administrative Code of the Republic of Kazakhstan

The revised Administrative Code¹ (hereinafter, the "**New Code**") entered into legal force in the Republic of Kazakhstan starting 1 January 2015.

The adoption of the revised Code reformed the Kazakhstan legislation on administrative violations, including with respect to liability for violation of the labor legislation. Please see below a brief review of key amendments in this area.

1. Elements of Violations Made More Specific

The previously existing constituent elements of violation set forth very generally as a "violation of labor legislation" has now been subdivided into several more specific elements, for example, such as "discrimination in the labor sphere," "violation of statutory requirements to the attestation of industrial facilities as to labor conditions," "failure to ensure investigation of accidents and concealment thereof," "admission to work without employment agreement," "failure to grant leaves," "unlawful exceeding of work time norm" and other.

Furthermore, the New Code makes more specific the liability for failure to pay salary, specifically, alongside with failure to pay or untimely payment of salary these elements of violation now explicitly include the liability for violating the labor legislation requirements to pay for overtime, work on holidays and days off, and for night work.

It is worth mentioning that the New Code now details and expands on the elements related to violations of the labor protection and safety rules. The provisions regarding consequences (causing harm to health), which previously were the grounds for qualifying the gravity of a violation, have now been completely excluded.

The Code has united in one article several elements of violation in the sphere of social partnership, specifically, this article embraces such elements as "evasion from participation in collective bargaining," "unjustified refusal to enter into a collective agreement" and "failure to perform or breach of obligations under a collective agreement."

2. Administrative Sanctions

As regards the amount and types of administrative sanctions, it is worth pointing out as follows. The New Code generally increases the amounts of administrative fines for violating the labor legislation requirements. Previously, the legislation established the minimum and maximum amounts of administrative fines (i.e. provided for a certain "range" of fines, for example from 200

¹ Administrative Code No. 235-V of the Republic of Kazakhstan dated 5 July 2014, as amended.



to 500 MCI²), and in the course of administrative proceedings a judge or an authorized agency was to determine the amount of fine within the established limits depending on the gravity of the violation and circumstances of each particular case. The New Code secures an absolutely definite amount of the administrative fine for committing a violation, which, however, varies depending on the status of persons being subjected to such fine: an individual or a legal entity, an officer, the category of business entity (small, medium or large scale), etc.

At the same time, alongside with toughening the liability for a number of violations, the New Code fairly often uses as an administrative sanction a "warning," which comprises a negative evaluation of the committed violation and caution to an individual or a legal entity regarding inadmissibility of unlawful conduct and which is issued by an agency (official) authorized to impose administrative sanctions.

As regards administrative liability of foreign citizens for violating the Kazakhstan labor legislation, generally, the New Code does not change the elements of violation and the scope of liability; however, in certain cases the New Code provides for a possibility to apply to a foreigner the administrative detention instead of administrative expulsion from the Republic of Kazakhstan.

Should you have any questions with respect to the New Code, we would be happy to provide you with the required advice.

Best regards,

ÆQUITAS Law Firm

² MCI – monthly calculation index determined for a relevant year by the Law "On the Budget of the Republic of Kazakhstan." In 2015, the MCI is KZT 1,982.00, which is approximately USD 11.