Legal 500
Country Comparative Guides 2026

Kazakhstan

Employment and Labour Law

Contributor

AEQUITAS

Yuliya Chumachenko

Senior Partner, Head of Business Law | y.chumachenko@aequitas.kz

Alexandr Chumachenko

Partner, Head of Labor & Employment | a.chumachenko@aequitas.kz

Anton Alexeyev

Senior Associate | a.alexeyev@aequitas.kz

Yerbol Almen

Associate | y.almen@aequitas.kz

This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Kazakhstan.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

Kazakhstan: Employment and Labour Law

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

Yes. According to the general rule, an employer needs a proper reason to dismiss an employee in Kazakhstan. In this regard, local labour legislation provides for opposite approaches for employers and employees, since the latter may terminate labour relationships at their will.

The Labour Code of Kazakhstan provides for an exhaustive list of legal grounds for termination of an employment contract (i.e. no dismissal is allowed under the grounds not expressly stipulated by legislation). Thus, an employment contract may be terminated:

1. by agreement of parties;
2. in connection with its expiration;
3. on the employer's initiative in cases expressly listed by legislation;
4. in connection with the employee transfer to another employer;
5. on the employee's initiative;
6. in case of occurrence of certain circumstances determined by law, which are beyond the control of the parties;
7. in case of the employee's refusal to continue labour relationships in cases determined by legislation;
8. in case of the employee transfer to an elective work (position) or appointment to a position, which excludes the possibility of further labour relationships; and
9. in case of violation of the conditions applicable to entering into the employment contract.

As regards the employer's initiative, the Kazakhstan legislation provides for about 30 specific cases where an employee may be dismissed based on this legal ground. All these cases may be conditionally divided into the following groups:

1. employee's failure to meet the requirements set to the work performed by the employee due to the employee's health condition, poor qualification, deprivation of the employee of certain special rights, etc.;
2. disciplinary or any other violation committed by an employee;
3. lengthy absence of an employee from work;
4. changes in the employer's activities, including worsening of its economic condition or liquidation of organisation;
5. special cases stipulated for employees of the quasi-public sector entities; and
6. occurrence of other special events, which are not directly connected with the employee's negative qualities, specifically, reaching the age of retirement by an employee, dismissal of a sideline employee in connection with hiring of a person for whom this would be the primary place of work, early termination of powers of members of the employer's executive body, employees of the internal audit service, and corporate secretary.

It is worth mentioning that termination of an employment contract based on the employer's initiative requires strict compliance with the procedure established by the law-maker for a specific case or a group of cases, occurrence of which leads to dismissal. Otherwise, the dismissal may be successfully challenged and an employee may be reinstated at the former place of work. In turn, we mentioned above that an employee may terminate labour relationships, just accordingly notifying an employer at least one month prior (greater notice period may be stipulated by an employment contract).

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

The current labour legislation of Kazakhstan does not support the concept of mass dismissals and provides for the uniform approach to implementation of the dismissal procedure, regardless of whether it is applied to one or several employees. This relates to dismissals based both on the employer's initiative and other legal grounds.

At the same time, additional (compared to those stipulated by legislation) guarantees and benefits for employees with respect to concurrent dismissal of several employees (e.g. greater period to notify of dismissal) may be stipulated by a collective bargaining

agreement and/or social partnership agreement.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

If a transaction involving the sale of business is effected by selling interest (shares) in a legal entity (i.e. there occur changes in the composition of participants / shareholders of such legal entities), according to the general rule, such transaction must not affect employees and labour relationships with them continue without any changes. It is worth mentioning here that, as applied to employees of a company in Kazakhstan, an employer is the very company but not its owners (participants / shareholders), i.e. no employer changes for employees in this case.

Obviously, a new business owner may have different opinion regarding the newly acquired asset, including the employees working for the acquired company. However, the company may not change or terminate labour relationships with employees making references to a business sale transaction. All changes in the conditions of work or termination of relationships must take place only according to the general order in complying with the procedures established by legislation. Specifically, according to the general rule, an employment contract may be changed only based on mutual consent, and terminated only based on legal grounds expressly stipulated by legislation. The sale of business is not among such grounds.

Another approach is applied to the members of the company's executive body. Thus, in case of changes in the composition of participants (shareholders) of a company, according to requirements of the Labour Code of Kazakhstan, this circumstance entails termination or renewal of an employment contract (decision on this issue is made by the company participants / shareholders). Please note that the law-maker does not determine the timeline, during which such actions must be taken. Therefore, there occur cases in practice where companies completely ignore the said legislation requirement or fulfil it (terminate or renew employment contracts with the executive body members) long time after closing the transaction and registration procedures. It is worth mentioning that an employment contract is an agreement between the parties; therefore, its conditions are determined by the parties and no employment contract may be entered into without mutual consent.

As regards the sale of business in the form of company's separate assets (e.g. specific equipment and work premises), such actions normally entail changes in the employer's organisation and may be used by the employer to initiate introduction of changes or termination of labour relationships with employees.

Thus, in light of changes in the organisation of production connected with reorganisation or changes in economic or technological conditions, conditions of organising labour and / or reduction in the scope of work of an employer, it is allowed to change the employee's labour conditions in case the employee further works for a company in accordance with the employee's specialty or profession, relevant qualification. This is to say that, in fact, an employer may unilaterally change the employee's labour conditions having accordingly notified the employee of such changes at least 15 calendar days prior to putting such changes into effect (unless a greater notice period is stipulated by an employment contract and / or collective bargaining agreement). In turn, the employee may agree to further work under the changed conditions (in which case relevant changes must be introduced into an employment contract) or refuse to do it. In this case, the employee's refusal serves as a ground for termination of the employment contract.

Relationships with employees may be terminated in connection with the sale of specific assets of a company based on other legal grounds, for example, based on employer liquidation (if, after selling the assets, the company terminates its activities at all), job displacement or staff reduction, or based on an agreement on cancellation of an employment contract. However, direct sale of business (assets) is not a legal ground for dismissal.

4. Do employees need to have a minimum period of service in order to benefit from termination rights? If so, what is the length of the service requirement?

The labour legislation of Kazakhstan does not provide for differences in the procedure for termination of labour relationships, depending on the length of service of an employee. This is to say that implementation of rights relating to termination of labour relationships does not generally depend upon the length of service and, in case of dismissing two employees based on the same legal ground, the dismissal procedure will be the same.

However, the length of service may have impact on certain aspects of dismissal. For example, length of service (specifically, the time actually worked by an employee within a record work year) affects the duration of the paid annual leave due to an employee. Accordingly,

the greater is the length of service before dismissal with an employee who has not used the days of the paid leave due, the greater will be the amount of compensation. Furthermore, an employment contract, collective bargaining agreement and / or internal documents of a company (employer's acts) may provide for special conditions of termination of labour relationships (most often such special conditions relate to the amount and / or structure of a compensatory payment in connection with dismissal).

5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

The necessity and period of prior notification of an employee (or employer) of termination of labour relationships depend on the applied legal ground for dismissal. This is to say that prior notice is mandatory only in certain cases expressly stipulated by legislation, specifically, in case of termination of an employment contract:

1) in connection with its expiration – on the last day of work (either party may initiate termination of relationships);

2) on the employer's initiative in case of:

- liquidation of the employer – at least one month prior (greater notice period may be stipulated by an employment contract or a collective bargaining agreement);
- job displacement or staff reduction – at least one month prior (greater notice period may be stipulated by an employment contract or a collective bargaining agreement);
- reduction in the volumes of production, work performed and services provided resulting in worsening of the employer's economic condition – at least 15 business days prior (greater notice period may be stipulated by an employment contract or a collective bargaining agreement);
- negative results of the employee's work during the probation period – at any time before the end of the probation period; and
- reaching the age of retirement by an employee – at least one month prior;

3) on the employee's initiative – at least one month prior (greater notice period may be stipulated by an employment contract);

4) on the employee's initiative in case of the employer's failure to fulfil conditions of an employment contract – at least three business days prior (provided that the employee has previously sent a notice to the employer regarding the latter's failure to fulfil conditions of the employment contract, and the employer did not eliminate violations within 7 business days of the moment of such notice); and

5) in connection with the employee transfer to an elective work (position) or appointment to a position, which excludes the possibility to continue former work due to requirements of law – law-maker is silent as to the precise period for notifying an employer by an employee.

The obligation of prior notification in case of termination of labour relationships in other cases may be stipulated by an employment contract, collective bargaining agreement or an employer's act. The parties may also notify each other at their own discretion.

Furthermore, in certain cases labour relationships are terminated based on documents submitted by one party to another (e.g. if an employee submits a written refusal to continue labour relationships under the changed labour conditions); however, strictly legally, such documents are not notices.

6. Is it possible to make a payment to a worker to end the employment relationship instead of giving notice?

A prior notice of termination of an employment contract is mandatory only in certain cases expressly stipulated by the Kazakhstan legislation. The law-maker established the fixed or the minimum notice term almost for each such case. In certain cases, a greater notice period (compared to the period established by law) may be stipulated by an employment contract, collective bargaining agreement or an employer's act.

Compliance by the initiator of termination of labour relationships with the notice period is intended to protect the second party's interests. Nevertheless, the Labour Code of Kazakhstan provides that the notice period may be reduced or replaced by a money compensation in cases, as follows:

1. in case of termination of an employment contract on the employer's initiative in connection with employer liquidation or job displacement (staff reduction), the dismissal

may take place prior to expiration of the notice period subject to a written consent of an employee;
2. in case of termination of an employment contract on the employer's initiative in connection with reduction in the volumes of production, work performed and provided services resulting in worsening of the employer's economic condition, the notice period may be replaced by payment of salary in proportion to the unworked period, if so agreed upon by the parties; and
3. in case of termination of an employment contract on the employee's initiative, the dismissal may take place prior to expiration of the notice period subject to a written consent of an employer (the employee may revoke an application for the employment contract termination at any time before expiration of the notice period).

7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during their notice period but require them to stay at home and not participate in any work?

The Kazakhstan legislation does not support the concept of 'garden leave.' The Labour Code of Kazakhstan provides for an exhaustive list of the types of leaves, which may be granted to employees, and garden leave (similar leave) is not included in such list. Furthermore, in most cases granting of leaves implies the initiative or consent of an employee, while according to the international practice, garden leave is a mechanism allowing to protect an employer against the employee's unlawful actions and, therefore, as a rule, an employer requires an employee to be on garden leave under unilateral procedure, which may be considered as suspension from work.

In Kazakhstan, suspension from work is allowed only in cases expressly stipulated by legislation. The Labour Code of Kazakhstan lists only some of them, specifically, as follows:

1. employee appears at work in the condition of alcohol, narcotic or other inhalant intoxication (their analogues) or consumes substances during a working day, which cause such condition;
2. employee failed to pass the exam on assessment of knowledge on occupational health and safety issues or industrial safety;
3. employee does not use individual or collective protective means provided by an employer;
4. employee failed to undergo medical examination or a pre-shift check-up in case they are mandatory under the Kazakhstan legislation;
5. employee has been deprived of the right to drive a transport vehicle or other authorisations required to perform work stipulated by an employment contract;
6. actions (omission) of an employee resulted or could have resulted in severe consequences for life and health of the very employee or other employees, on-the-job injuries and accidents, violation of the occupational health and safety rules, fire safety rules or safe driving rules; and
7. employee failed to ensure safety of property and other values transferred to the employee under a written agreement on assumption of full material liability.

It is worth mentioning that an employee is suspended from work for the period until identifying and / or eliminating the reasons serving as a ground for suspension and, in case of suspension from work, the employee does not retain salary. This is to say that the mechanism of suspending employees from work does not correspond to the concept of garden leave either.

Foreign companies doing business in Kazakhstan may apply the mechanisms stipulated by local legislation instead of garden leave, for example, as follows:

1. if an employee fails to perform or improperly performs labour duties and such actions (omission) fall within the cases stipulated by legislation, the employee may be dismissed as a disciplinary sanction;
2. if an employee does not generally violate labour duties or the committed violations do not allow for application of dismissal as a disciplinary sanction, an employer may use other grounds for dismissal applicable to the employee, which do not require the employee's consent (e.g. wait until expiration of an employment contract, implement the job displacement or staff reduction procedure, etc.);
3. employer may enter into negotiations with an employee regarding the dismissal conditions under the procedure for entering into an agreement on employment contract cancellation (in this case the dismissal takes

place from the date agreed upon by the parties);
4. if labour relationships are terminated starting from a certain date and an employer needs an employee not to work actually until that moment, if the employee agrees to do so, such period may be fully or partially (depending on the number of the days of the paid leave unused by the employee) covered by the paid leave, or the employee may be granted an unpaid leave; and/or
5. if an employee commits certain violations, an employer may temporarily suspend the employee from work.

8. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures. Is an employee entitled to appeal against their termination?

The employment contract termination procedure is regulated in detail by the Kazakhstan legislation. In order to lawfully terminate labour relationships, an employer must comply with the established procedure. There are specific procedural aspects with respect to each legal ground for termination of labour relationships. However, in general, relevant legislation requirements come to presence of a legal reason (occurrence of an event granting the right to terminate labour relationships), fulfilment of requirements on notification of an employee (employees' representatives), employer or authorised agencies (if applicable), execution of relevant procedural documents, and issuance of an employer's act on termination of labour relationships.

An employer's act on termination of labour relationships must specify the precise ground for dismissal with a reference to a relevant rule of law, and a copy of this act must be served to an employee against personal signature or sent by a registered mail with advice of delivery within three business days of the date of issuing the act.

All settlements with a dismissed employee must be performed within three business days of the date of dismissal. Furthermore, during the same period, an employer must introduce information on termination of an employment contract into the state database (Unified Accounting System of Employment Contracts).

If an employee believes that any employee's legitimate rights and interests have been violated in the course of termination of labour relationships by an employer, including if there have been violations in the dismissal procedure established by legislation, the employee may challenge lawfulness of the employer's actions by initiating an individual labour dispute. The employee may also apply to the state labour inspectorate to initiate inspection of the employing organisation, detect the committed violations and bring the employer to liability. However, recognition of dismissal as illegal is beyond the competence of the labour inspectorate and may be effected only when resolving an individual labour dispute at the conciliation board (mandatory pre-trial stage of considering individual labour disputes) or in court.

9. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

The Labour Code of Kazakhstan does not expressly regulate the consequences of failure to comply with the dismissal procedure. However, judicial practice gives much importance to compliance with this procedure. Therefore, its violation may entail recognition of dismissal as illegal.

Legality of dismissal may be challenged in the course of an individual labour dispute at the conciliation board (mandatory pre-trial stage) and in court in due sequence. Legality of dismissal is evaluated by the authorised agency on an individual basis with a view to what specific violations have been committed by the employer and subject to the actual case circumstances.

Conciliation board is a special permanent body set up within the employer organisation from the equal number of representatives of employees and the employer. The conciliation board is not set up within the employer organisation or a labour dispute is not subject to consideration by such body in cases, as follows:

- employer is a micro-business entity (entrepreneurs with the annual average number of employees equal to no more than 15 people, or the annual average income of no more than 30,000 monthly calculation indices, which is equal to approximately USD 261,000);
- employer is a non-for-profit organisation with no more than 15 employees;
- employee is a household employee, i.e. an employee performing work (providing services) for employers who are individuals with their private household kept by one or several family members, if work (services) is

performed (provided) not for the purpose of deriving income by the employer or for the employer;
- employee is a member of the executive body of the employing company; and
- employee is referred to other special categories of employees stipulated by legislation, including employees on active duty, employees of special state and law-enforcement authorities, civil protection authorities, and public officials.

If an individual labour dispute has not been settled at the pre-trial stage or the parties do not agree with a resolution of the conciliation board (fail to fulfil its resolution), the parties may apply to court.

In case of illegal dismissal, consequences for an employer will depend on claims to be filed by an employee, including for recognition of dismissal as illegal, reinstatement at the former place of work, payment for the period of forced absence from work, compensation for moral damages and other costs relating to dispute resolution.

It is worth mentioning that recognition of dismissal as illegal will not itself entail reinstatement of an employee at the former place of work, because the court will consider a dispute within the stated claims, and no reinstatement is possible without the employee's expressed will.

In case of reinstatement of an employee at the former place of work, an employer will have to pay salary to the employee for the entire period of forced absence from work within the limit of six months. Claims for compensation for moral damages and other costs relating to dispute resolution may be filed and satisfied during the judicial stage only.

It is worth separately mentioning that, starting March 2026, failure to fulfil (improper fulfilment) of the requirement on introduction of information regarding termination of an employment contract into the Unified Accounting System of Employment Contracts entails administrative liability for an employer.

10. How, if at all, are collective agreements relevant to the termination of employment?

The Labour Code of Kazakhstan provides for a number of cases where special conditions of termination of labour relationships may be determined in a collective bargaining agreement. For example, a collective bargaining agreement may provide for greater periods for notifying regarding dismissal in case of employer liquidation or job displacement (staff reduction), or a greater compensatory payment in connection with loss of job.

Certain issues referred by the law-maker to regulation in a collective bargaining agreement indirectly relate to termination of labour relationships. Specifically, the Trade Union Law establishes that the procedure for considering opinions by the trade union body in case of termination of labour relationships with employees who are the members of such trade union must be determined in a collective bargaining agreement. Likewise, a collective bargaining agreement may determine the procedure, conditions and frequency of conducting attestation of employees. If an employee demonstrates poor qualification according to the results of such attestation and, accordingly, fails to correspond to the position held or work performed, the employer may terminate labour relationships.

At their own discretion, the parties may include additional conditions in a collective bargaining agreement. Conditions of a collective bargaining agreement must not worsen the position of employees as compared to the labour legislation of Kazakhstan and social partnership agreements applicable to an employer and its employees. Otherwise, such conditions will be invalidated and will not be subject to application.

11. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

The Kazakhstan legislation requires an employer to notify, or obtain approval for, an employee's dismissal from parties other than the employee himself / herself only in certain cases. Specifically, the employer must:

1) consider motivated opinion of the trade union body in case of termination of labour relationships 'on the employer's initiative' (except for the employer liquidation) with the employees who are the members of the elective trade union bodies not released from primary job;

2) obtain a positive motivated opinion of a superior trade union body in case of termination of labour relationships 'on the employer's initiative' (except for employer liquidation) with a head (chairman) of the trade union not

released from primary job;

3) obtain a relevant resolution of the attestation commission in case of dismissing employees in connection with their non-conformity to the position held or work performed due to poor qualification;

4) obtain a relevant resolution of the examination commission in case of dismissing an employee in connection with the employee's repeated failure to pass the assessment of knowledge on the issues of occupational health and safety or industrial safety;

5) obtain a relevant medical opinion in case of dismissing an employee:

- in connection with the employee's non-conformity to the position held or work performed due to the condition of health preventing from further performance of such work and making it impossible to further perform such work;
- who is at work in the condition of alcohol, narcotic, psychotropic, inhalant intoxication (their analogues), including in case of consuming the substances causing such condition during a working day;

6) obtain a positive resolution of a commission set up from the equal number of representatives of an employer and the employees in case of dismissing an employee, who has less than 2 years until reaching the age of retirement, in connection with:

- job displacement or staff reduction;
- non-conformity to the position held or work performed due to poor qualification;

7) obtain written confirmation from a new employer regarding consent to hire an employee if the employee is dismissed in connection with transfer to another employer;

8) obtain a court judgment on recognition of an employee as guilty in theft (petty stealing) of someone's property at the place of work, intentional destruction or causing damages in case of the employee dismissal based on this ground;

9) obtain a court judgment on recognition of an employee as guilty in a corruption offence, which excludes the possibility of further work, in case of the employee dismissal based on this ground;

10) obtain a court judgment on recognition of a strike as illegal or on suspension of the strike in case of the employee dismissal in connection with further participation in such strike;

11) notify the authorised agency in the population employment sphere (career centre / labour mobility centre) at least one month prior regarding the upcoming release of employees in case of termination of labour relationships in connection with:

- liquidation of the employing company;
- job displacement or staff reduction
- reduction in the volumes of production (work, services) resulting in worsening of the employer's economic condition;

12) notify the employees' representatives at least one month prior regarding the upcoming dismissal in connection with reduction in the volumes of production (work, services), which has led to worsening of the employer's economic condition.

Failure to comply with the above requirements is a violation of the dismissal procedure, which may result in recognition of dismissal as illegal. Failure to notify the authorised agencies in the employment sphere regarding the release of employees in the above cases may entail administrative liability for an employer.

12. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

Prohibition against discrimination is one of principles of the labour legislation of Kazakhstan and covers all stages of labour relationships, including termination. At the same time, in practice, state protection of employees is applied mainly in case of discrimination in the sphere of labour remuneration, labour conditions and employment, whereas the Kazakhstan legislation is silent as to special regulation regarding any discriminatory dismissal.

If an employee believes that he / she has been subjected to discrimination in the course of termination of labour relationships, the employee may apply to court or other instances for the protection of own rights.

Certain employers additionally provide for internal compliance measures to prevent from any discrimination, including development of the rules of conduct at a workplace, internal procedures for considering the employees' complaints, personnel trainings, and implementation of the mechanisms of monitoring and control over observation of equal rights and opportunities.

The Kazakhstan legislation does not distinguish harassment as an independent set of elements of a violation, including in the sphere of labour relationships. Such actions may be qualified under the general procedure – criminal or administrative – depending on specific circumstances, for example, as slender, petty crime, stalking, or other violations of personal rights and personal immunity.

In case an employee encounters such actions, he / she may apply for protection to the law-enforcement authority.

13. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

If discriminatory nature of dismissal is confirmed in the course of consideration of an individual labour dispute over legality of dismissal of an employee, it may be recognized as illegal.

Depending on claims filed by an employee, recognition of dismissal as illegal may entail reinstatement of the employee at the former place of work, payment for the period of forced absence (within six months), compensation for moral damages and costs incurred by the employee in connection with the dispute consideration. If the fact of discrimination is proved, the probability of adjudication of compensation for moral damages to the employee, as well as the amount of compensation, may be much greater than in other disputes over legality of dismissal.

If discrimination is expressed in violation of the employee's right to equal pay for equal labour and to equal conditions of life and work, the employer may be brought to administrative liability in addition to compensation to the employee of the outstanding amounts (difference between the actually received amount and due non-discriminatory amount).

In case of harassment, liable is a specific guilty person and such liability is determined, depending on classification of the committed violation according to criminal or administrative proceedings.

14. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

The Kazakhstan legislation provides for a number of restrictions for employers on implementation of the right to terminate labour relationships with employees. Such restrictions relate to both certain categories of employees and occurrence of certain events, specifically, as follows:

1) employer must extend a definite-term employment contract (entered into for a definite term of at least one year) with an employee (pregnant woman or a person who has a child under the age of 3) who wishes to exercise the right to a childcare leave and submits a relevant application to the employer, up to the date when such leave ends;

2) during the period of temporary work incapacity of an employee or during the employee's leave, an employer may not terminate labour relationships

- in cases referred by the Labour Code of Kazakhstan to the employer's initiative (with some exceptions, including liquidation of the employing company);
- on the basis of the employee's refusal to be transferred to another locality together with an employer, continue work in connection with changes in labour conditions, or temporary transfer to another job due to health condition in case of suffering an on-the-job injury, occupational disease, or due to any other harm to health not connected with production;

3) employer may not terminate labour relationships in connection with job displacement (staff reduction) or reduction in the volumes of production (work, services) resulting in worsening of the employer's economic condition, with the following categories of employees:

- pregnant woman submitting a pregnancy certificate to an employer;
- woman with a child under the age of 3;
- single mother raising a child under the age of 14 (disabled child under the age of 18); and
- employee raising a child under the age of 14 (disabled child under the age of 18) without a mother;

4) employer may not terminate labour relationships with an employee, who is a member of the elective trade union body or acts as a head (chairman) of a trade union body and is not released from the primary job, without a motivated opinion of the trade union body;

5) without positive opinion of a commission to be formed from the equal number of representatives of employer and employees, the employer may not terminate labour relationships with an employee who has less than two years until reaching the age of retirement, on the basis of:

- job displacement or staff reduction;
- employee's failure to conform to the position held or work performed due to poor qualification.

15. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

At the same time, if an employee has provided or is currently providing assistance with counteraction against corruption at the employing company by providing information to a superior manager or the management of the employer, individual labour disputes, to which such employee is a party, must be considered with invitation of a representative of the authorised agency for corruption control. Among other things, such labour disputes may relate to legality of dismissal. The requirement to invite a representative of the authorised agency is effective within 3 years of the date the authorised agency receives an employee's message of the fact of a corruption offence or from the moment the employee provides other corruption control assistance.

16. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

In case of worsening of economic conditions of an employer, it may apply the following mechanisms stipulated by the Kazakhstan legislation:

1. employer may enter into negotiations with an employee and agree new labour conditions (such changes must be executed by a supplementary agreement to an employment contract);
2. if reorganisation or changes in economic, technological conditions, conditions of organising labour or reduction in the volumes of work result in changes in the employer's organisation of production, the employer may unilaterally change labour conditions of an employee if the employee further works in accordance with the employee's specialty or profession, relevant qualification (in case of the employee's refusal from further labour relationships under the new labour conditions, the employment contract is terminated based on this ground);
3. in case of idle time, an employer may transfer an employee without the latter's consent for the entire period of idle time to another work, which is not contraindicated for health reasons (in which case remuneration is paid according to the work performed);
4. in case of production necessity, including temporary substitution of an absent employee, an employer may transfer an employee without the latter's consent for a period of up to 3 months within a calendar year to another work not stipulated by an employment contract, which is not contraindicated to the latter for health reasons, at the same organisation, in the same locality, or to a structural subdivision of the employer located in another locality, with labour remuneration according to the work performed but not lower than the average salary at the previous place of work;
5. employer may initiate the job displacement or staff reduction procedure and terminate labour relationships with the affected employees based on this ground (in which case the employer must notify of dismissal the affected employees and the authorised agency in the sphere of population employment at least one month prior and pay compensation to the employees in connection with loss of job in the amount of an average monthly salary);
6. if reduction in the volumes of production, work performed and services provided entails worsening of the employer's economic condition, including closing of the employer's structural subdivision (workshop, site), the employer may terminate labour relationships with the affected employees based on this ground (in which case the employer must notify of dismissal the employees' representatives and the authorised agency in the sphere of population employment one month prior, and the affected employees – 15 business days prior, and pay compensation to the affected employees in connection with loss of job in the amount of two average salaries).

17. What, if any, risks are associated with the use of artificial intelligence in an employer's

recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

Although Kazakhstan has a local law on artificial intelligence (entered into force in January 2026), the current legislation of Kazakhstan does not regulate the issues of using artificial intelligence in decision-making processes on HR matters.

At the same time, the entire existing system of labour relationships in Kazakhstan assumes that decisions on HR matters are made directly by people, specifically, by an employer in the person of its authorised representatives (primarily CEO of the employing company), employee, representatives of employees, or representatives of authorised agencies. This is to say that a tool such as artificial intelligence may be used in decision-making (not prohibited by law), but only as an auxiliary tool, while the decision itself is made by a relevant human.

18. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

According to the general rule, in case of termination of labour relationships with an employee, all settlements with the employee must be performed not later than 3 business days after dismissal. The final payment must include as follows:

1) salary attached to position, including increments and additional payments established in connection with labour conditions of the employee for a relevant record period (month) in proportion to the time actually worked in such period as of the date of dismissal;

2) compensatory and incentive payments stipulated by conditions of an employment contract and internal documents of a company (employer's acts), as well as a collective bargaining agreement (if any) and social partnership agreement (if applicable);

3) compensatory payment for the days of the paid annual labour leave unused by an employee (if the employee has not used the due days of such leave in full);

4) compensatory payment in connection with loss of job:

- in the amount of average salary of an employee for one month in case of termination of labour relationships on the employer's initiative in connection with job displacement (staff reduction) or employer liquidation or on the employee's initiative in connection with the employer's failure to fulfil conditions of an employment contract;
- in the amount of average salary of an employee for two months in case of termination of labour relationships on the employer's initiative in connection with reduction in the volumes of production, work performed and provided services resulting in worsening of the employer's economic condition;

A greater compensatory payment in connection with loss of job may be stipulated by conditions of an employment contract, collective bargaining agreement and / or employer's act.

5) compensatory payment for termination of labour relationships on the basis of the fact that an employee has reached the age of retirement (paid only in case of applying this very ground for dismissal and in the amount determined in an employment contract, collective bargaining agreement or an employer's act);

6) compensatory payment in connection with termination of labour relationships voluntarily provided by an employer on its own initiative or upon an agreement with an employee (including secured in an agreement on cancellation of an employment contract).

Calculation of compensatory payments, which are based on an employee's average salary, is made according to a special procedure established by legislation, which generally comes to the following.

Average salary is the product of an average daily (hourly) salary and the number of working days (hours) falling within the period, for which the calculation is made. In turn, the average daily (hourly) salary is calculated by dividing the salary paid to the employee for the record period (12 months preceding the event in connection with which the calculation is made, or the actual period of employment if the employee has worked for less than 12 months for an employer) by the number of working days (hours) falling within that record period. Working days (hours) are determined subject to the work schedule established for an employee.

Thus, when calculating compensation in connection with loss of job, at first, it is necessary to determine salary accrued to an employee for 12 months preceding the dismissal (or the actual period of employment). This

amount is divided by the number of working days or hours for the entire period used in the calculations. The resulting average daily (hourly) salary is then multiplied by the number of working days (hours) falling within the period of one month (two months) after the dismissal date. When calculating compensation for the paid leave unused by an employee, the average daily (hourly) salary is multiplied by the number of working days (hours) falling within the period of unused part of the leave conditionally granted to an employee starting the next day after dismissal.

It is worth mentioning that the law-maker provides for a number of periods and types of payments that are not taken into consideration when calculating average salary. There are also some other nuances in these calculations. Therefore, they should be performed by dedicated experts.

As regards the amount of other compensatory payments in connection with dismissal, it is determined either by agreement with an employee (or employees' representatives) or unilaterally by an employer. At the same time, when entering into an agreement on cancellation of an employment contract (just a kind reminder that this is an independent legal ground for termination of labour relationships), the law does not provide for any employer's obligation to pay any special compensation to an employee. In other words, the employer may not offer such compensation at all. However, in practice, employees generally do not agree to dismissal without such compensation. Therefore, the need for compensation and its amount are determined solely by agreement of the parties.

Most often compensation is set as a fixed amount equal to the employee's average salary or salary attached to the employee's position for a certain number of months. In practice, most common are payments in the amount of 1, 3 or 6 monthly salaries. In certain cases known to us, compensation reached 12 salaries, or an employee was provided with the employer's property as an additional incentive to enter into an agreement on cancellation of an employment contract.

19. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

The Kazakhstan labour legislation provides for the possibility for the parties to enter into an agreement on cancellation of an employment contract as an independent ground for termination of labour relationships. In addition to determining the date of terminating labour relationships in such agreement, the parties may also specify the amount or form of compensation provided by an employer to an employee in connection with dismissal, and resolve any existing disputable issues.

Often, employers also include provisions in an agreement regarding the employee's waiver of any claims against an employer after terminating labour relationships and performing settlements with the employee. However, legality of such waiver is disputable, it is not directly regulated by legislation and, in practice, employees preserve the right to challenge both the legality of dismissal itself and certain conditions of an agreement on cancellation of an employment contract.

The agreement on cancellation of an employment contract is entered into in writing. It is worth mentioning that not only paper but also electronic documents are referred to written documents by the Kazakhstan legislation. However, in order for electronic documents to have legal force, they must be signed by both parties using electronic digital signatures issued in accordance with the legal procedure established by National Certification Authority, organisations accredited by it, or foreign organisations registered with a trusted third party of Kazakhstan.

The procedure for entering into an agreement on cancellation of an employment contract stipulated by the Labour Code of Kazakhstan is as follows. The initiator of the agreement sends a notice the other party with a proposal to enter into the agreement. The party receiving the notice must notify the initiator of the decision made in writing within 3 business days. If there is a mutual agreement to terminate labour relationships in principle, the parties agree upon the content and sign the agreement on cancellation of an employment contract. In practice, however, employees and employers normally hold negotiations at first (in several rounds, if necessary) until reaching consensus on the dismissal conditions and only after that they sign the procedural documents. All necessary documents are often signed the same day.

Direct termination of labour relationships is executed by an employer's act (order), which specifies a legal ground for dismissal (entering into an agreement on cancellation of an employment contract). A copy of this employer's act is served to an employee in person against the employee's signature or sent by registered mail with

advice of delivery within 3 business days of issuing the employer's act.

Although inclusion of such conditions as non-disclosure of confidential information by an employer and / or employee in an agreement on cancellation of an employment contract is widely spread in practice, lawfulness of relevant conditions relating to the period after termination of labour relationships is disputable. In light of this, to protect information sensitive for the parties it is recommended to enter into separate civil non-disclosure agreements, which will clearly regulate the scope of such information, rights and obligations of the parties, and liability for violations.

20. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

The Kazakhstan labour legislation provides for a possibility to enter into the so-called non-compete agreement between an employee and an employer, which limits the employee's rights to engage in activities that could cause harm to the employer. However, the law-maker does not regulate in detail what restrictions may be imposed on an employee, referring this issue, as well as the issue of conditions for accepting such restrictions (e.g. condition on provision of compensation to an employee), to the parties' agreement.

According to the Labour Code of Kazakhstan, before entering into a non-compete agreement with an employee, an employer must develop and approve within its organisation a list of positions and work eligible for entering into non-compete agreements. Accordingly, to enter into a non-compete agreement, the employee's position (or the work performed by the employee) must be included in such list. According to international experience, this list typically includes only top managers, but the list of employees may actually be much broader.

Please note that, despite the fact that 10 years have already passed since appearance of the concept of a non-compete agreement in the labour legislation, there is no agreement of opinions within the Kazakhstan legal community on the fundamental question of what such an agreement is. Opinions can be roughly divided into two groups. The first group believes that a non-compete agreement is a part (one of conditions) of an employment contract. To the best of our knowledge, this group includes some of the drafters of the Labour Code who, according to them, intended this very sense to be included in relevant provisions during their legislative work. The second group adheres to literal interpretation of law and considers a non-compete agreement as an independent agreement between the parties. This gives rise to disputes over such important aspects as the term of a non-compete agreement (conditions) and limits of liability for its violation.

If we consider a non-compete agreement as an independent civil agreement (although related to labour relations), the civil legislation of Kazakhstan allows the parties to freely form its content, including to provide for contractual liability (payment of forfeit, compensation for damages in full instead of only real damages), as well as to determine any term of the agreement.

However, if we consider the non-competition restrictions solely as a condition of an employment contract, i.e. as part of labour relationships, the non-competition clause may not extend beyond the term of the employment contract (since dismissal terminates the employment contract) and the employee's material liability for harm caused to the employer must be limited to real damages (as required by the Labour Code of Kazakhstan). It is worth mentioning that, according to the recent clarifications of the authorised labour agency regarding duration of a non-competition clause, it adheres to this very opinion.

Thus, an employer may enter into a non-compete agreement with an employee (with the latter's consent and subject to inclusion of the latter's job / position in the list approved by an employer), determining specific restrictions and conditions for their acceptance, and may claim for compensation by the employee for the damages caused by violation of these restrictions. However, when extending the effect of restrictions to the period after termination of labour relationships and / or claiming for compensation for damages in excess of real damages, there is a risk that such conditions (claims) may be recognized by court as unlawful. To mitigate this risk, a non-compete agreement should be entered into as an independent civil agreement and, if the effect of restrictions is extended to the period after dismissal, to limit such period to reasonable and objective terms.

It is worth separately mentioning that restrictions on the conflicts of interest are expressly provided by law for certain categories of employees, which may completely or partially (depending on the employer's business interests) eliminate the necessity to enter into a non-compete agreement. Specifically, members of the executive body of a limited liability partnership (one of the most common forms of legal entities in Kazakhstan) may not:

1. enter into transactions with the partnership without consent of the employing company's superior body, if such transactions are intended to receive property benefits (including gift agreements, loan agreements, free-of-charge use agreements, sale and purchase agreements, etc.);
2. receive commission either from the employing company or from third parties for the transactions entered into by the employing company with third parties;
3. act on behalf of and in the interests of third parties in their relations with the employing company;
4. engage in entrepreneurial activities competing with the activities of the employing company; and
5. perform other actions stipulated by the articles of association of the employing company.

The restrictions set out in items 1-3 above also relate to spouses, all direct descendants and ascendants, whole blood brothers and sisters of the members of the employing company's executive body.

21. Is it possible to restrict a worker from soliciting customers or clients, or employees of the employer, after the termination of employment? If yes, describe any relevant requirements or limitations (including any payments that must be made to the worker for the restriction to be valid and enforceable).

The Kazakhstan legislation does not directly regulate the possibility of limiting the employee's rights to solicit clients or other employees of a former employer after termination of labour relationships. In practice, such restrictions are usually agreed upon by the parties and included in a non-compete agreement same as the conditions of accepting them (e.g. duration of a restriction and compensation to a former employee for compliance). However, implementation of such protective mechanism carries the risk of making the non-compete agreement unenforceable, since lawfulness of the non-competition conditions separated from an employment contract (after termination of the employment contract) is disputable.

22. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

The Labour Code of Kazakhstan obligates employees not to disclose information constituting state, commercial or any other law-protected secret, which has come to their knowledge in connection with performance of labour duties.

As a rule, confidential information covers:

- commercial secret;
- restricted-access personal data collected and processed by an employer;
- data classified as confidential information by employer's acts, constituent documents of the employer and resolutions of its bodies, as well as by contracts (agreements) with employees and / or counterparties of the employer.

Commercial secret is a confidentiality regime established with respect to protection of a special category of confidential information of an employer, related to its activities and closed by the employer from free access, since it has actual or potential value for the employer (may be used to derive income and other material benefits) due to its being unknown to third parties, and its disclosure may cause damages to the employer's interests.

The procedure for classification of confidential information, as well as conditions of its storage and use, are determined by the employer itself. The employer independently determines the range of persons who have the right of free access to confidential information and takes measures for its protection.

Of course, it could be reasonable to include provisions on non-disclosure of confidential information in an employment contract with an employee. However, for the purposes of legal protection of the employer after termination of labour relationships, it is recommended to additionally obtain a signed unilateral obligation from an employee on non-disclosure or to enter into a separate civil non-disclosure agreement. At the same time, there is no legislative regulation regarding the terms of non-disclosure obligations (agreements); accordingly, they may be determined by the employer at its own discretion, including with a view to commercial value of the information.

Persons who have unlawfully obtained, disclosed, or used confidential information must compensate for the damages caused and pay liquidated damages in excess of losses, if this is stipulated in a civil obligation (non-disclosure agreement) of such person.

23. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include? What duties apply to employers giving references?

According to the Labour Code of Kazakhstan, if so requested by an employee (including a former employee), an employer must issue a reference letter within 5 business days of the date of request, which will contain information about the employee's qualifications and attitude to work.

Thus, the obligation to provide a reference arises for an employer only in case of a written request from an employee (but not a new employer) asking for such document. No legal consequences for failure to provide or delay in providing the reference are stipulated by legislation.

The employee may compel the employer to provide a reference letter by applying to a labour inspector with a request to take measures to eliminate a violation of legislation committed by the employer. As a rule, the labour inspector issues an ordinance to eliminate the violation within a specified period. In case of failure to eliminate the violation, the employer may be brought to administrative liability for failure to fulfil requirements of the labour inspector.

As regards the content of a reference letter, the law is limited only to an indication that qualification of an employee and the employee's attitude to work must be included in this document. In practice, issuance of reference letters in Kazakhstan is not widespread, and if such document is issued by an employer, it is usually of formal nature and contains limited information.

24. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

1. Initiation of inspections of an employer and labour disputes by dismissed employees

Since termination of labour relationships with an employee, especially on the employer's initiative, is in most cases accompanied by a conflict, the most common consequence of dismissal is challenging its legality by an employee (first before a conciliation board, where applicable, and then in court). Employees often additionally resort to filing of complaints to the state controlling authority against employers and initiation of unscheduled inspections of the employer's activities. Such actions on the part of the employee may pursue different objectives, ranging from exerting pressure on the employer to an attempt to collect evidence or record certain facts of potential violations of legislation for their subsequent use in court.

To mitigate the employer's risks in such situations, it is recommended to engage in preventive preparation for an unscheduled inspection. If an employer has information about the content of the employee's complaints, it is advisable to prepare responses to potential questions from the controlling authority in advance. The scope of such preparation depends on specific arguments set out in the employee's complaint.

Furthermore, it is necessary to understand that employees must be dismissed in strict compliance with the procedural requirements of legislation. Any, even minor, deficiency in the dismissal procedure, against the backdrop of possible judicial doubts, may become the missing element that turns those doubts into a legal basis for recognizing the dismissal as illegal. In each case it is worth engaging lawyers either for a preliminary legal expert examination of the dismissal documents already prepared by an employer or for the initial drafting of proper legal documents, elaboration of a consistent employer's position in selecting the dismissal grounds, and determining the tactics of maintaining communication with the employee, as well as for professional support during the employer inspections and resolution of labour disputes at all stages in order to mitigate potential risks and ensure maximum protection of the employer's interests.

2. Notification procedures

For the purpose of dismissing an employee on a number of legal grounds (primarily in connection with such common ground as staff reduction or job displacement), an employer must comply with the notification procedures provided for by legislation. For example, in case of staff reduction or job displacement, an employer must notify an employee and the authorised agency in the sphere of population employment at least 1 month prior to the contemplated date of dismissal.

In practice, employers often encounter problems related to failure to deliver a notice to an employee (due to the employee's deliberate unwillingness to receive the notice properly in order to hinder an employer in implementing this mandatory procedure) and technical malfunctions of a portal (resource) where notices to the authorised

agency are submitted electronically. The terms of dismissal depend on the date the notice is submitted; moreover, failure to submit the notice may be considered by court as a material violation of the dismissal procedure and may result in recognition of the dismissal as illegal with reinstatement of the employee at the previous place of work. To prepare to such potential scenario development, an employer should take the following measures when implementing the notification procedure.

For the purpose of proper recording of the fact of sending a notice to an employee on paper, it is necessary to ensure that the employee personally signs the notice to acknowledge its receipt and review. In case of sending the notice by postal service, the employee must personally sign the relevant postal documents, or the postal service must prepare documents confirming the delivery and handover of the notice to the recipient if the employee refuses to sign the postal documents.

The labour legislation of Kazakhstan allows for notifying the employees in the electronic form, including by email (publicly available sources contain clarifications of the authorised agency in the sphere of labour allowing for notification even via messengers, such as WhatsApp and Telegram). If an employee refuses to review, accept, or sign the notice, the employer should not limit itself to sending it only by post; the notice should be immediately sent (same day) via corporate email and, if allowed under the employer's information security policies, to the employee's personal telephone via messengers. The notice should be sent via corporate email (or messenger) either by the CEO of the employing company from his / her work email (corporate telephone number) or from the general email account (corporate telephone number) of the employing company, or by another person authorised to represent the employing company on the basis of corporate documents or a power of attorney, using his / her work email (corporate telephone number).

The fact of the employee's refusal to review, accept, or sign the notice may be documented (in a formal act) at the employer's discretion. Such document must clearly indicate the documents presented (delivered) by the employer to the employee and the employee's response (i.e. what specific actions the employee refuses to perform).

As regards technical issues with submission of notices in the electronic form, it is recommended to make sure that the notice has been successfully posted after submission and that there are no technical malfunctions in the operation of portals of the unified digital employment platform. If there is information about a technical failure, to protect own interests and confirm timely submission of the notice, the employer should request that the technical support:

- confirms the fact of a technical failure;
- records the fact of submitting a notice by the employer in the electronic portal system; and
- reflects correct (required for the company) date of submitting the notice.

3. Specifics of dismissing foreign employees

The Kazakhstan legislation imposes an obligation on an employer to ensure that foreign employees hired by it comply with migration requirements during their stay in the territory of Kazakhstan and, after termination of labour relationships, ensure departure of such employees from the country. For the purposes of lawful stay in Kazakhstan during employment, foreign citizens obtain work visas or, in the case of visa-free entry into Kazakhstan, temporary residence permits. Issuance of these documents is made dependent on an employment contract with a specific employer. If an employee is dismissed and an employment contract is terminated, the permitting documents obtained on the basis of such employment contract lose their force.

Formally, the employer does not have the authority to independently cancel a temporary residence permit or visa, and the Kazakhstan legislation does not contain any express obligation to notify the migration authority of termination of labour relationships with a foreign employee. Nevertheless, in practice, employers normally send notices to the authorised agency regarding termination of employment contracts, attaching a copy of a relevant employer's act. It is recommended to follow this practice and submit notices to the migration authority in order to mitigate the risks for the employer associated with the former employee's failure to comply with migration requirements. After receiving such notice, an employee becomes obligated either to leave the territory of Kazakhstan or to obtain new permitting documents on the basis of new employment (or civil) contracts.

4. Verification of the fact of temporary work incapacity

The employer may not dismiss an employee on a number of grounds (in a number of cases) referred by legislation to the employer's initiative, during the period of the employee's leave or temporary work incapacity. In light of this, one of the methods often used in practice by bad-faith employees to prevent dismissal or at least significantly delay the process is obtainment of a medical certificate on temporary work incapacity the day before

dismissal. If the employee obtains such document for the period, during which the employer intends to terminate labour relationships and informs the employer thereof, the employer will have to postpone dismissal until the end of temporary work incapacity. If an employer's act on termination of labour relationships is issued by that time, the employer will have to revoke it and issue a new act with an updated dismissal date. If the employee conceals this information and the employer dismisses a temporarily incapable employee, the employee may later use this circumstance as a ground for recognition of the dismissal as illegal.

We are not aware of any mechanisms that would allow a company to prevent from such development of the situation. Although the employer may (and it is usually recommended to do so) request in the dismissal notice that the employee provides information about the employee's health condition and the likelihood of obtaining a medical certificate in order to ensure compliance with the employee's rights, this circumstance may only confirm the good faith of the employer's actions but does not limit the employee's right to challenge legality of dismissal. Nevertheless, certain methods of protecting the employer's interests are provided for by legislation. First, a medical sick leave certificate (certificate of temporary work incapacity) is issued only in a strictly regulated manner in case of specific diseases, which must be confirmed by opinion of a doctor and the head of the relevant medical organisation. Second, if an employee unlawfully obtains a medical opinion, the employer may verify (challenge) its legitimacy in the course of a labour dispute. For this purpose, it is possible to send an advocate request or a request from a legal consultant to medical organisations, as well as to the local health authority. The outcome of such requests may not be guaranteed; however, there is some positive practice. Moreover, even in case of refusal of a medical organisation, the received responses will confirm the good faith and objective nature of the employer's actions, which will favourably contrast with the employee's behaviour who avoids contacts with the employer.

All above steps should be considered not as separate measures, but as a single defence strategy. Such complex approach will allow mitigating the risks, prepare to any scenario in advance, and confirm good-faith behaviour of the employer.

25. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

In Kazakhstan, the legislative authority is considering several draft laws providing for amendments to various aspects of labour relationships. The specific timelines for the adoption of these draft laws are unknown. Meanwhile, Kazakhstan has launched the process of adopting a new Constitution, which provides, among other things, for a new procedure for lawmaking activities. These political changes in the country may result in both a delay in the consideration of the draft laws in their current versions and their complete revision by a new legislative authority. Nevertheless, employers should take into account the following anticipated changes, which may be significantly important for the employee dismissal procedure.

1. Job displacement or staff reduction

Dismissal in connection with job displacement or staff reduction is already difficult to implement, including due to the need for prior preparation and strict compliance with the established procedures and restrictions, and it is associated with a high risk of subsequent challenges by former employees as to legality of their dismissal. Furthermore, implementation of dismissal based on this ground takes much time. Meanwhile, the amendments considered by the legislative authority may further complicate the dismissal process and impose additional obligations on employers. In particular, it is contemplated to:

- establish the cases on a legislative level where such dismissal is substantiated;
- describe in details the procedure for notifying employees of the upcoming dismissal (by way of electronic document flow);
- introduce additional guarantees for employees whose positions (staff units) are subject to reduction, such as priority right to re-training or employment to other positions with this very employer;
- change the procedure for calculating and making severance payments in case of dismissal in order to ensure sufficient financial support to the dismissed employees; and
- strengthen control over the dismissal procedure in order to avoid employer's abuse.

2. Expiration of an employment contract

Without addressing specific terms relating to the special status of an employee or the work assigned to the employee, the Kazakhstan legislation provides for the

necessity to enter into an employment contract either for an indefinite term or for a definite term of at least one year. To terminate an employment contract entered into for a definite term, at least one of the parties must notify the other party on the last working day before expiration of the term of its intention to terminate the employment contract. If no such notice has been given and labour relationships actually continued, the employment contract is deemed as to have been extended for the same term, for which it was initially entered into.

Employees actively use this mechanism of automatic extension of employment contracts, including in bad faith. Thus, employees often take leave or obtain a medical opinion on temporary work incapacity the day before expiration of an employment contract, which allows them to be away from the workplace on a legal basis and effectively avoid receiving notice of expiration of the employment contract. The current legislation does not take account of these circumstances for the purpose of implementing the dismissal procedure based on expiration of the employment contract.

According to the planned amendments, the situation will change. The rule on automatic extension of an employment contract will apply subject to the periods of temporary work incapacity and the employee's social leave. Thus, if the last working day before expiration of an employment contract falls within any of these periods, the last working day will be the working day following the end of the employee's temporary work incapacity or social leave.

3. Cancellation of an employment contract on the employee's initiative

According to the general rule, an employee may terminate labour relationships by notifying the employer at least one month in advance. Once the notice period expires, the employee may stop working. However, in practice, submission of such notice does not guarantee proper execution of dismissal for an employee, since it is carried out by the employer. There have been cases where employees duly notified the employer and actually stopped working after the notice period, but still did not receive any dismissal documents or the corresponding payments from the employer, leaving them in a legal deadlock.

To rectify this situation and provide employees with greater protection, it is planned to supplement the rule on the employee's right to stop working after expiration of the notice period with an obligation for the employer to issue all documents related to employment to the employee, as well as to make due monetary payments, except for the cases where the employee is materially liable person and, through the employee's own fault, has not completed the procedure for handover of the employer's property (documents). The period for the handover of the employer's property (documents) with materially liable employees will not exceed one month from the date of notifying of cancellation of the employment contract. The employer is obligated to take all necessary measures to ensure handover of property (documents) with the materially liable employees.

4. Cancellation of an employment contract as a disciplinary sanction

The current legislation of Kazakhstan establishes 4 types of disciplinary sanctions (admonition, reprimand, severe reprimand, and cancellation of an employment contract), which may be applied by an employer to an employee for a disciplinary violation. At the same time, cancellation of an employment contract as a disciplinary sanction is allowed only in cases expressly listed in the Labour Code of Kazakhstan (e.g. in case of absence of an employee from the workplace without a valid reason for 3 or more consecutive hours during a working day). Other types of disciplinary sanctions may be freely applied by an employer at its own discretion.

According to the expected changes, the law-maker intends to determine the factors that an employer must take into account when deciding to impose disciplinary liability on an employee and choosing the type of disciplinary sanction. Thus, when determining the type of disciplinary sanction, an employer must consider the content, nature, and severity of the committed disciplinary violation, circumstances of such violation, prior and subsequent behaviour of the employee, and attitude of the employee to work. It is also assumed that, in light of necessity to consider behaviour of the employee preceding the disciplinary violation in question, the employer will have to apply disciplinary sanctions only sequentially – first an admonition, then a reprimand, then a severe reprimand, and only as the last resort – cancellation of the employment contract, except for gross violations directly provided for by legislation.

5. Cancellation of an employment contract with employee reaching the age of retirement

According to the current legislation, once an employee reaches the retirement age, an employer may terminate the employment contract based on this ground, notifying the employee at least one month prior and paying compensation. The minimum compensation is not established by law, and the final amount is determined by the employment contract, collective bargaining

agreement, or an employer's act, i.e. the employer may actually determine the amount of compensation unilaterally, and such payments are small in practice. It is planned that the law-maker will establish the minimum amount of compensation (average monthly salary of an employee), while preserving the possibility to provide for a greater compensation in a collective bargaining agreement or a social partnership agreement.

The general recommendation for preparing employers in anticipation of the planned legislative amendments is to, first, carefully monitor, through the media, the processes of adoption of new regulatory legal acts and the dates of entry into force of such amendments and, if it is necessary to initiate dismissal of employees, regardless of the chosen ground for dismissal, to preliminarily coordinate their actions, planned payments and documents for execution of dismissal with lawyers in order to ensure compliance with the current legislation and thereby minimize the risks, including the risk of challenging by the employees of the dismissal legality.

Contributors

Yuliya Chumachenko
Senior Partner, Head of Business Law
y.chumachenko@aequitas.kz

Alexandr Chumachenko
Partner, Head of Labor & Employment
a.chumachenko@aequitas.kz

Anton Alexeyev
Senior Associate
a.alexeyev@aequitas.kz

Yerbol Almen
Associate
y.almen@aequitas.kz