
GENERAL CHARACTERISTICS OF THE NEW LABOR CODE OF THE REPUBLIC OF KAZAKHSTAN

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President Nursultan Nazarbayev has signed a new Labor Code of the Republic of Kazakhstan on the 15th of May in 2007, and in accordance with the Law of the Republic of Kazakhstan on May 15, 2007 № 252–111, “On implementation of the Labor Code of the Republic of Kazakhstan” the Labor Code of the Republic of Kazakhstan introduced effect upon the expiration of ten calendar days after its official publication. (see Kaz. pravda 22.05.20007g. №76 (25 321) after the entry into force of the Labor Code of the Republic of Kazakhstan several legislative acts of Kazakhstan no longer in force, in particular the laws of a Republic of Kazakhstan “Collective agreements”, “On labor in the RK”, “Collective labor disputes and strikes”, “On Social Partnership in the RK”, “On the security of the health and safety”.

According to the above Act, the Republic of Kazakhstan are some rules of the Labor Code of the Republic of Kazakhstan into force from January 1, 2008, in particular, p.2 st.122, st.204, st.239 claim 1, subparagraph 5 point 5 st.276 Labor Code of the Republic of Kazakhstan. Labor Code of the Republic of Kazakhstan consists of: 2 parts (general and specific), and sections 6, 40 chapters and 341 articles.

Labor relations arise between the employee and the employer under an employment contract, as well as the conclusion of an employment contract may be preceded by the following procedure: the election of the post (the elections), the election of the contest to fill the respective positions, appointment or approval of the position, direction of the work authorized by law authorities in the established quota, adjudication of the employment contract (article 20 of the LC RK).

Labor Code of the Republic of Kazakhstan defines as the subject of an employment contract labor function of the employee and the employer's duty to ensure that working conditions in a timely and fully pay the employee wages. Hallmarks of an employment contract from other types of contracts are: implementation of an employee (job description) for a particular qualification, profession, occupation or position, obligations personally, with the subordination of labor regulations, workers receive wages for labor (Article 24, 27 LC RK).

Compared with the Law of the Republic of Kazakhstan "On labor in the Republic of Kazakhstan" of 10.12.1999, One of the features of the LC RK is that the basic document certifying the employee is a career employment history, as well as the contract of employment with the employer on the mark date and cause of his termination of discharge from the acts of the employer, confirming the origin and termination of employment on the basis of the conclusion and termination of the employment contract, extracts from the statements of salary payment to employees, track record signed by the employer, organization or stamped by a notary, archival information, which contains information on labor of the employee (Article 34, 35 LC RK)¹.

Labor Code of the Republic of Kazakhstan establishes rules concerning the causes of invalidity of employment contract (Article 39 of the LC RK). These bases are an employment contract under the influence of fraud, violence, threats, alleged employment contract with a person recognized as incapable of a person under the age of fourteen, with a person under

¹ See the order of the Minister of Labor and Social Protection of 05/07/07. No. 149-P "On Approving the Form and Rules for storage and work books".

sixteen years of age, without the written consent of a parent, guardian, adoptive parent.

The Labor Code of the Republic of Kazakhstan is the rate on the order of termination of employment contract by agreement of the parties (article 52 LC RK) party wishing to terminate the employment contract by agreement of the parties shall notify the other party and the party has been notified, shall, within three working days in writing form to inform the other side of the decision, and the employee in writing of a failure to warn the employer of the employment contract, and if, after a seven-day period of non-fulfillment of the conditions of the employment contract continues the head of the employee may terminate the contract of employment, the employer written notice no later than three working days (Article .57 LC RK).

Chapter 5 of the Labor Code of the Republic of Kazakhstan is dedicated to the protection of personal data of the employee (st.st. 64–68 LC RK). Under the protection of personal data of the employee – is understood about the personnel needed for the origination, continuation and termination of employment, and by the processing of personal data of the employee – refers to the receipt, storage and transmission of personal data of employees.

Chapter II of the Labor Code of the Republic of Kazakhstan devoted to training, retraining and further training of employees, where the party is under contract of training to be concluded between the employer and the trainee on the conditions of training, retraining and skills development.

In order to deal with labor disputes Labor Code of the Republic of Kazakhstan – allocates separate “individual labor disputes” (Chapter 15 LC RK) and “collective labor disputes” (Chapter 32 LC RK).

Chapter 16 of the Labor Code of the Republic of Kazakhstan devoted to the peculiarities of regulation of workers under the age of eighteen years of age, where the fixed rules of law governing labor relations with minors, as well as highlighted in separate chapters the regulation of labor relations of women and other persons with family responsibilities, those working part-time, persons engaged in heavy work, work in hazardous (extremely harmful), and hazardous working conditions, employment of persons employed in seasonal work, the work of people working in shifts, labor, domestic workers, labor, invalids, the work of civil servants, the work

of employees of small businesses, labor leader and members of the collegial executive body of the legal person, the work of civil servants, members of Parliament and maslikhats, Judges of the Republic of Kazakhstan, persons in the military service and law enforcement personnel (17–28 gl.gl. LC RK).

One of the innovations in the Labor Code of the Republic of Kazakhstan particularly labor regulation head and members of the collegial executive body of the legal persons (chapter 27 Articles 248–257 LC RK).

In order to give some of the views and opinions, we need to address and laws of the Republic of Kazakhstan in particular legislation regulatory activity of economic entities on the territory of the Republic of Kazakhstan.

Law of the Republic of Kazakhstan dated March 1, 2011 No. 413 «On state property» in the Kazakh state-owned enterprise is considered as a property complex which includes all types of property, including land, rights, debts, and the right to sign, personalized his work and other exclusive law. Considering the management of enterprise governance Act «On public property», stresses that the employment relationship with the head of state-owned enterprise is issued by the employment contract in accordance with the labor legislation of the RK (st.139 Act), the Republican State Enterprise with the competent authority by appropriate industry and public utility companies with the local executive body. But in that article of the Law «On State Property» is an exception under which managers of state enterprises with the status of National Education is appointed and dismissed by the President of the Republic of Kazakhstan².

The Law of the Republic of Kazakhstan “On Joint Stock Companies” dated May 13, 2003 №415–11 has a legal norm, indicating that the bodies of joint-stock company are the shareholders meeting – as the supreme organ of society, the board of directors – as the sole agency performing the functions of the executive body and other bodies (Article 33 of the Act).

² On State Property: The Law of Kazahstan, Almaty 2011, p. 108.

The adopted May 2, 1995 No. 2255 in the Republic of Kazakhstan Law “On Business Associations” to the authorities of a partnership include: a general meeting of a partnership – as the supreme authority, the executive body – collective or individual – is carrying out the current leadership and the right to form the Audit Commission – for control over the executive.

In order to control the activities of persons considered a joint stock company or economic partnership or a state enterprise in relation to labor law and labor on a labor law indicates the presence of certain procedures such as this election for the post, the election of the competition, appointment or approval in position, the direction of the work authorized body in the established quota, adjudication of the employment contract and the employment relationship between the head of the executive and owner of the property authorized person having authority under an employment contract, the constituent documents or agreement of the parties.

Features of the employment contract with the director is determined primarily by the fact that the order of the employment contract is determined by the constituent documents, which must comply with the legislation of the Republic of Kazakhstan.

Second, with regard to the concept of “collegiality” in a comment in the Civil Code of the Republic of Kazakhstan (General Part), edited by M.K. Suleymenova, J.G. Basin expressed the view that the effective management of major business associations, to which are joint-stock companies, it is impossible without creating a collegial executive... The meaning of the rule lies in the collective management, the minority obeys the majority decisions.

In other words, the members of this body should take action to manage the current affairs of the society on the basis of a coherent will. The decisions taken collectively, are binding on the seven members of the Board³ and that the number of collegiate administration

³ Grazhdansky Code of the Republic of Kazakhstan (General Part). Comment (itemized) in two books. Book-I-revised and expanded, with the judicial practice, ed. M.K. Suleymenov, Almaty 2003, p. 544.

officials involved in the management of current affairs should be at least 3 people.

On the issue of the sole in the management of a legal entity, we believe, in order to enter into an employment relationship, you have to face certain procedures prior to the conclusion of an employment contract with the head of the executive body of the legal entity. Features of the employment contract with the head of the legal entity, we see the following: NR with the head of state enterprise labor contract concluded governmental authority, and in turn the head of state-owned enterprise shall be personally liable to the owner, the competent authority and government authority for the state of affairs in the company.

In analyzing the legal position the head and members of the collegial executive body should be noted that the emergence of the employment relationship with the head of the legal person or members of the collegial executive body is based on a complex legal structure, election to the office, the election of the contest to fill the respective positions, appointment or approval in the office, at the direction of the work) to the competent authorities of the established quota and adjudication of an employment contract with the manager or members of the collegial executive body of the entity we need to define the procedure for concluding an employment contract, the subject of an employment contract and order the termination of the employment contract. If an employment contract with the head of the executive body of the legal entity is determined by the property owner or authorized bodies for the period specified in the legislation of the Republic of Kazakhstan, the constituent documents or by agreement of the parties, the subject of an employment contract with the head of the legal entity is a specific range of rights and responsibilities of data subjects of labor relations, and the order termination of the employment contract with the head of the executive body of the legal entity identified in st.st. 52, 53, 54, 252 of the Labor Code of the Republic of Kazakhstan.

Now, we need to define the notion of election, the election of the competition, appointment or approval in the office, a job placement quota, a judicial decision on the conclusion of an employment contract, election – in labor law in our opinion means – select by a vote of employees in the general meeting of the personnel manager of the enterprise or the Board

of Directors shall elect the leader and members of the executive body, defines the term and the number of members of the executive authority (Article 53 paragraph 2 of the Law “On Joint Stock Companies”).

The election of the contest – which means the entry and hiring of employees meet the requirements of the legislation passed the competition and recommended to the conclusion of an employment contract on the basis of the decision-competitive contract commission (eg, Art. 14 of the Law “On State Service”).

Appointment on position or statement in the post means – hiring employees or approving the decision of the authorized body for appointment of superior authority in the chain of command based on the subordination of economic entities. The direction of the work on account of the quota – which means establishing a minimum number of jobs for certain categories of citizens as a percentage of average number of employees who the employer is obliged to employ (eg, Article 7 of the n .5–1,5–2, the Law “On employment”).

Adjudication of the employment contract means – which came into effect the judgment of the employment contract as a result of illegal, unreasonable refusal and because of the illegal dismissal of an employee by the employer on the grounds of unforeseen labor legislation (eg, Article 7, LC RK “Prohibition of discrimination in the workplace”).

The Labor Code of the Republic of Kazakhstan, along with labor relations with the head or collegial executive body of the legal person has several features that are worthy of new creative thinking and learning.

The main objectives of the Labor Code of the Republic of Kazakhstan are to ensure compliance with labor standards with international standards, compliance with the principles of international law, international experience of regulating labor relations, to minimize the negative effects during the entry into the WTO, as well as the consolidation of the Labor Code of the Republic of Kazakhstan the relevant current market requirements of international labor standards, expanding the scope of the contractual regulation of labor relations, balancing the interests of workers, employers, their representatives and the state in the development of the institution of social partnership, and compliance with industrial relations system to international standards. The main purpose of the Labor Code

of the Republic of Kazakhstan is the regulation into conformity with the Law of the Republic of Kazakhstan on March 24, 1998, No. 213–1 «On Normative Legal Acts» homogeneous social relations, which include labor relations. Labor relations in accordance with Article 1 of the Labor Code of the Republic of Kazakhstan is the relationship between employer and employee arising for the rights and obligations under the labor legislation of the Republic of Kazakhstan, employment, collective agreements, as well as for directly related to employment – folding on the organization and management of labor, employment, vocational training, retraining and skills development, social partnership, collective bargaining and agreements, workers' participation in the establishment of working conditions, grievance and monitoring compliance with labor laws. Republic of Kazakhstan. The subjects of labor relations are an employee and employer.

In accordance with Labor Code of the Republic of Kazakhstan to the labor legislation is the legal regulation of labor relations and other relations directly linked to employment, aimed at protecting the rights and interests of the parties to labor relations, the establishment of minimum guarantees for the rights and freedoms in the workplace, and problems of labor law are the creation of the necessary legal conditions aimed at achieving a balance of interests of parties to labor relations, economic growth, increasing production efficiency and welfare.

Equally important is the consolidation of the Labor Code of the Republic of Kazakhstan of such concepts as “employment contract” (in the Law “On Labor” was the concept, the individual employment contract), which in our opinion, corresponds to Article 24 of the Constitution of the Republic of Kazakhstan and of the principle of “freedom of labor,” which also corresponds to the above-mentioned article of the Constitution of the Republic of Kazakhstan (Article 6 of the LC RK).

The new Labor Code of the Republic of Kazakhstan was intended to promote the consolidation of a new model of labor relations in a market environment where the main objectives should be to protect labor rights and obligations of subjects of labor relations.

Abstract

The aim of this article is to describe and explain the novelty of the New Labor Code of the Republic of Kazakhstan, and in accordance with the Law of the Republic of Kazakhstan was signed on May 15. The Labor Code of the Republic of Kazakhstan, along with labor relations with the head or collegial executive body of the legal person has several features that in author's opinion are worthy of new creative thinking and learning. As the Author underlined in this article, the main objectives of the Labor Code of the Republic of Kazakhstan are to ensure compliance with labor standards with international standards, compliance with the principles of international law, international experience of regulating labor relations, to minimize the negative effects during the entry into the WTO, as well as the consolidation of the Labor Code of the Republic of Kazakhstan the relevant current market requirements of international labor standards.