

National Labour Law Profile: Kazakhstan

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Constitutional framework

The Constitution of the Republic of Kazakhstan (hereinafter referred to as “the Constitution”) was adopted on 30th of August 2002 by nationwide referendum and came into force on 5th of September 1995. The Constitution declares that Kazakhstan is a democratic, secular, legal and social State whose highest values are the individual, and his/her rights and freedoms (Article 1 of the Constitution). The Republic of Kazakhstan, according to Article 2 of the Constitution is a unitary State with a presidential form of government.

The President is the head of the State and the highest executive authority of the Government who is elected by universal, equal and direct suffrage under a secret ballot for a term of 7 years, and may be re-elected for a second term (Article 41 of the Constitution). The President has broad authorities and, *inter alia*, the authority to initiate constitutional amendments, dissolve Parliament, veto legislation, appoint and dissolve the government and appoint local heads of government (Article 44 of the Constitution).

The legislative branch consists of two chambers acting on a permanent basis: the Senate and the Majilis. The Senate consists of two deputies elected from each oblast, each major city and from the capital. The President appoints seven senators for the term of the Senate. The Majilis consists of 77 deputies, 67 of whom are elected from electoral districts in accordance with the current administrative and territorial units and ten are elected according to the party lists. In accordance with the Constitution, deputies of the Senate are elected for the term of six years and deputies of the Majilis, for the term of five years (Section 4 of the Constitution).

The executive branch is represented by the Government, which is appointed and accountable to the President. The Government consists of a prime minister, several deputy prime ministers and ministers.

The judicial power in Kazakhstan is exercised by courts through the constitutional, civil, administrative and other forms of judicial procedure as established by law. The Supreme Court of Kazakhstan is the highest appeal court in the country for both criminal and civil matters (Article 75 of the Constitution).

There is also a separate judicial establishment, the Constitutional Council, which consists of seven members. The Constitutional Council is empowered, *inter alia*, to consider the laws adopted by the Parliament with respect to their compliance with the Constitution, before they are signed by the President, officially interpret the Constitution, decide on the correctness of conducting the elections of the President of the Republic (Article 72 of the Constitution).

The Constitution declares a number of rights of people in the field of labour and industrial relations, including the right to freedom of forming associations (Article 23 of the Constitution), to freedom of labour and the free choice of occupation and

profession, the right to safe and hygienic working conditions, to just remuneration without discrimination, as well as to social protection against unemployment. The right to individual and collective labour disputes is also recognized by the Constitution (Article 24 of the Constitution).

Sources of Labour Law

In Kazakhstan, labour relations are regulated by the regulatory legal instruments, individual contract of employment and, if one exists, a collective labour agreement. The labour laws and regulations of the Republic of Kazakhstan are based on the Constitution of the Republic of Kazakhstan and include the Labour Law and other legal instruments, which regulate labour relations of some separate categories of the employees. The major sources of labour legislation are laws adopted by the Parliament, and technical acts, passed by the governmental agencies.

According to Article 3 of the Labour Law of Kazakhstan, the labour law regulations in Kazakhstan are applicable to all workers who have entered into employment relations with employers. The most important legal enactment, which regulates labour relations in Kazakhstan, is the Labour Law of 1999 (“the LL”), which came into force on 1st January 2000 and replaced the amended old Labour Code dating from 1972. The Law regulates social relations arising in the course of implementation of the citizen’s constitutional right to the freedom of labour, stipulated in Article 24 of the Constitution. The Labour Law consists of 12 chapters and 108 articles.

There are also a number of other legal acts, which regulate the labour and industrial relations, not covered by the Labour Law, such as:

The Law on Collective Labour Disputes and Strikes (July 8, 1996);

The Law on Collective Agreements (July 4, 1992);

The Law on the Occupation of the Population (1998);

The Edict on Approving a Position on Qualification Classes of State Employees (July 12, 1996);

The Law on Employment of Population (January 23, 2001);

The Law on State Service (July 23, 1999).

According to Article 2 of the Labour Law, international treaties ratified by Kazakhstan prevail over the Labour Law and other regulatory legal instruments for labour, and are applied directly except in cases where the international treaty implies that its application demands publication of a corresponding law of the Republic of Kazakhstan. The labour law regulations in Kazakhstan are also applicable to employment relationships with foreigners and persons without citizenship, unless otherwise provided by a federal law or an international treaty of Kazakhstan.

Contract of employment

Conclusion of contract of employment

Minimum age

The minimum age for conclusion of a contract of employment established by Article 11 of the Labour Law is 16 years. In the event of completion of secondary education or leaving a comprehensive educational establishment, persons who have reached the age of 15 with consent of their parents (tutor, guardian) can also conclude a contract of employment. A contract of employment may also be concluded with a student to perform some light work, not harmful to his/her health and not interfering with his/her studies, in his/her free from learning time. To be admitted to such work, a person must be 14 years of age and have the consent of a parent, tutor or guardian. The consent of the parent, tutor or guardian is given in writing and the contract of employment is signed together with the minor. Employment of persons under the age of 18 for heavy manual work and work involving harmful and/or dangerous conditions of labour is forbidden by the Labour Law (Article 11 of the LL).

Formalization of contract of employment

The Labour Law specifies the requisites of contracts of employment, as well as procedural steps to be taken in connection with the entering into a contract of employment. For example, at least two copies of the labour contract must be signed. After the conclusion of a contract, the employer should issue an order of appointment of the employee to his/her position; copy, which must be brought to the latter's notice against his/her signature (Article 12 of the LL). Any modifications or supplements to the contract of employment are to be made according to the procedure provided for its conclusion.

Term of contract of employment

According to Article 10 of the Labour Law, the contract of employment may be concluded for:

- 1) an indefinite period;
- 2) a definite period;
- 3) a period of performance of a certain work or for a period of replacement of a temporarily absent worker.

If the effective period of the contract of employment is not specially stipulated, the contract shall be deemed to be concluded for an indefinite period of time. The date of the beginning of the work indicated in the contract of employment is deemed the beginning of performance of labour functions by the employee.

In the event of absence of and/or failure to duly formalize a contract of employment by the employer, the effect of the contract of employment begins from the date of actual admission to work. After the conclusion of contract of employment, the

employer is obliged to issue an order about the employment of the employee which should be brought to the latter's notice against his/her signature. To conclude a contract of employment, the employer is entitled to demand presentation of documents certifying the labour activity of the employee, his/her identification document (passport), social individual code certificate, pension agreement, birth certificate for persons under the age of 16 years, certificate of education and professional training and other papers provided by the laws and regulations (Article 12 of the LL).

The contract of employment with the director of an establishment is concluded by the owner of the establishment or a person or body authorized by the owner for a period stipulated by the constitutive documents or agreement between the parties.

Probation

The Labour Law contemplates the use of probation periods in order to test the employee for compliance with the work assigned to him/her. The probation period must be established in the contract and must not exceed three months. During the probation period, the employer or the employee may terminate the labour contract upon written notice. If neither party gives notice of cancellation of the contract, then, at the end of the probation period, the contract automatically continues and may be terminated as provided in the contract and the Labour Law (Article 15 of the LL).

Termination of contract of employment

The Labour Law provides that a contract of employment terminates at the expiration of its term or due to the circumstances beyond the will of the parties (Article 25 of the LL) The meaning of "the circumstances beyond the will of the parties" is not exhaustively defined in the Labour Law, but examples provided in Article 30 include obligatory military service, enforcement of a sentence against the employee making the work impossible, in the case of death, and the finding of the court that the employee is incapable, or, of limited ability due to which he is unable to continue the previous work.

The Labour Law provides that a contract is cancelled either upon the written consent of the parties, or at the request of either party in certain cases. An employer may request the cancellation of a contract only in cases stipulated by the Labour Law and provided that the employee is notified in writing, as specified in the contract. In any event, this notification must be given not less than one month prior to the date of cancellation (Article 25 of the LL).

Dissolution of labour contract on the initiative of the employer

According to Article 26 of the Labour Law, a contract of employment can be dissolved on the employer's initiative in the following cases:

- 1) Liquidation of the establishment (legal person), termination of the activity of the employer (natural person);
- 2) Downsizing of employees or staff;

- 3) Disclosure during the action of the contract of employment of unfitness of the employee for the occupied post or performed work due to inadequate level of skill or state of health preventing him from continuation of this work;
- 4) Failure to report for work for over two months owing to temporary disability, with the exception of maternity leave, and in cases where the laws and regulations provide for a longer period of disability for certain diseases.
- 5) Refusal of the employee to be transferred to another locality together with the establishment;
- 6) Refusal of the employee to be transferred to a lighter job in compliance with paragraph 2 of Article 23 of the Labour Law;
- 7) Refusal of the employee to continue work due to change of labour conditions;
- 8) Repeated failure of the employee to perform his/her labour duties without good cause, provided he has a disciplinary penalty;
- 9) Single gross violation of his/her labour duties by the employee;
- 10) Commitment of unlawful acts by the employee directly engaged in dealing with monetary or commodity values if these acts give grounds for the employer to lose confidence in him/her;
- 11) Commitment of an immoral act by the employee performing instructional functions in the sphere of education, this act being incompatible with continuation of the work;
- 12) Divulging of the information classified as the State, service, commercial or other law-protected secrets entrusted to the employee under the contract of employment;
- 13) Refusal of the employee to work in case of temporary transfer to another job because of the temporary transfer in connection with standstill;
- 14) Reinstatement in employment of the employee, who had earlier been performing it, by ruling of the court.

The termination and cancellation of a labour contract is carried out on the basis of a written order, issued by the employer. One-month written notice must be provided in cases where a contract is cancelled on the grounds of liquidation of the establishment or downsizing of employees or staff; no extra notice requirements are specified for a cancellation on the grounds other than stipulated (Article 25 of the LL).

Payments due after the dissolution of labour contract

After the dissolution of a contract, the Labour Law specifies mandatory payments to employees to be paid in several cases. In the two cases of liquidation and downsizing of the workforce, the Labour Law specifies the payment of an average monthly salary

on cancellation. The Labour Law also provides that the contract may set out other reasons and sizes of compensation (Article 27 of the LL).

Hours of work

According to the Labour Law, the hours of work should not normally exceed 40 hours per week (Article 45 of the LL). The Law also establishes shorter hours of work in several cases:

- 1) Hours of work should not exceed 24 hours per week for employees aged between 14 to 16 and not over 36 hours per week for employees aged between 16 to 18;
- 2) Hours of work not to exceed 36 hours of work for employees engaged in heavy manual work and work in harmful conditions of labour.

Overtime work

Articles 41-52 of the Labour Law stipulate the provisions concerning overtime work. Except for the cases directly listed in the Labour Law, overtime may only be required with the consent of the employee. The aggregate amount of annual overtime is not limited; however, overtime work should not exceed two hours of work for every employee (one hour for those engaged in heavy manual work and that with harmful and/or dangerous conditions of labour) in one calendar day. For those engaged in work in very harmful and dangerous conditions, overtime work is forbidden. The definitions used in the Labour Law for both “harmful” and “extremely harmful”, and “dangerous” and “extremely dangerous”, work conditions are the same, and thus should be prohibited.

According to Article 51 of the Labour Law, overtime work without consent of the worker is allowed only in the following exceptional cases:

- 1) in performance of works necessary for the defence of the country as well as for preventing emergency situations or acts of natural disasters, industrial accidents or immediate control of their consequences;
- 2) in performance of works of public necessity pertaining to water, gas and heat supply systems, systems of lighting, sewerage, transport, communication so as to remove any accidental or unexpected circumstances interfering with their proper functioning;
- 3) for continuation of the work in case of absence of the relief worker where the work cannot be interrupted, but for the maximum of hours provided for by Article 50 hereof.

Time of rest

The Labour Law requires that an employee must have a break of at least one hour each day or shift (Article 53 of the LL). There must also be at least a 12-hour daily break between ending work one day, and beginning work the next day (Article 55 of

the LL). Employees with a five-day week should be given two consecutive days off, one of which is a Sunday, and employees with a six-day week should get one day off, which is generally a Sunday. Work can be required on days off only with the consent of an employee (Article 56 of the LL).

As a rule, work on official holidays is forbidden, except in cases where work cannot be interrupted for production or technical reasons or due to the necessity to provide uninterrupted service to the population (Article 58 of the LL).

The Labour Law indicates that unless it is otherwise stipulated in legislation, contract or collective agreements, or an employer's deed, employees must have at least 18 calendar days of annual paid vacation. The annual vacation for the first year of employment is to be taken after one year of employment. At the request of an employee, an annual vacation may be split (Article 60 of the LL).

Paid Leave

Employees under a contract of employment should be granted paid annual leave with retention of their place of work (position) and average monthly pay. The leave is paid for at the most, three calendar days before commencement.

The paid annual leave granted to the workers should be at least of 18 calendar days duration, unless provided otherwise by other laws and regulations for some categories of the workers, by other legal regulatory instruments, contracts of employment, collective agreements and employer's instruments. Additional annual paid leave is granted to those workers engaged in heavy manual work or work in harmful and dangerous conditions, as per list of jobs, professions and posts defined by the competent public authority.

The conditions and procedure of granting the annual paid leave are specified in the contract of employment and collective agreement. It is forbidden for annual leave to be withheld for two consecutive years (Article 60 of the LL).

Pay issues

According to the Labour Law, the employer him/herself establishes the amount of wages, however, it cannot be lower than the minimum amount of wages established by Kazakhstani legislation (Article 71 of the LL).

Wages are to be paid at least once a month. The day of payment is specified by the contract of employment and collective agreements (Article 76 of the LL). If this day falls on a holiday or on a day off, then payment must be made the day before. Unless otherwise provided in a labour contract, or a deed of the employer, wages must be paid at the workplace. Employers requiring alternative payment options, for example through a bank deposit, should stipulate this in the applicable agreement or in a deed (Article 76 of the LL).

It should be noted that the Labour Law provides that employees performing work other than that stipulated in their labour contract, or work of a temporarily absent employee in addition to their own work, are entitled to be paid extra wages. The

amount of the extra wages is to be determined by the employer upon agreement with the employee.

The professional skill requirements for employees and complications of particular jobs, are identified on the basis of the professional skill reference book of the jobs and professions of the employees, and professional skill reference book of the office employees' positions. The development and procedure of application of the above referenced books are determined by the public labour authority. Complications of the work performed and professional skill grades of the employees is identified by the employer him/herself, in compliance with the professional skill reference book of the jobs and professions of the employees, and professional skill reference book of the office employees' positions (Article 70 of the LL).

There are different wages for work outside regular time. Payment for overtime work must be at least 1.5 times the regular payment (Article 76 of the LL). Payment for work on holidays or days off must be at least twice the regular payment. Payment for night work (between 10:00 pm and 6:00 am) must be at least 1.5 times the regular payment. At the request of an employee, a day off may be given in lieu of extra pay for work on holidays and days off (Article 73 of the LL).

Guarantees and compensations

Chapter 8 of the Labour Law deals with guarantees and compensations to employees. It stipulates a number of guarantees to employees performing public duties, employees sent for medical examination, social benefits in cases of temporary incapacity to work.

The employer may release the employee from his/her work for the period of performance of public and social duties with retention of his/her place of work (positions). The employee who has served regular military service has a preferential right to retaining employment at the enterprise from which he was drafted (Article 80 of the LL). When an employee is sent for upgrading of professional skills and retraining, his/her work is discontinued, but his/her working place (position) and average monthly wages is retained (Article 81 of the LL).

Maternity benefits as well as social benefits to women and men who adopted children directly from the maternity home is granted for the entire period of maternity leave or leave for a period from the day of adoption to expiration of fifty-six days from the date of birth of the adopted child (Article 86 of the LL).

Financial liability of parties to contract of employment

A party to the contract of employment which has caused any damage to the other party is obliged to indemnify the latter for it, in conformity with the Labour Law and other regulations, either on the basis of the court ruling or on a voluntary basis (Article 89 of the LL). Details of the financial liability of the parties to the contract of employment are stipulated in the contract.

According to Article 91 of the Labour Law, employees bear financial liability in full measure for the damage inflicted through their doing, on the employer, in the following instances:

- 1) There is an agreement in writing between the employee and employer regarding acceptance of full financial liability for a failure to ensure safety of property and other values transferred to the employee;
- 2) In compliance with the laws and regulations, full financial liability is imposed upon the employee for any damage inflicted on the employer while in line of duty;
- 3) The property and other values were received by the employee on account against a non-recurring power of attorney or other non-recurring documents;
- 4) The damage was inflicted by the employee in a state of alcoholic or narcotic intoxication or intoxication of any other kind;
- 5) The damage was inflicted by deficit, intentional destruction or intentional spoiling of materials, semi-finished products, articles (products), including those in the process of their manufacture, as well as of tools, instruments, special clothing and other articles issued by the employer to the employee for use;
- 6) The damage was inflicted as a result of disclosure of commercial secrets;
- 7) The damage was inflicted by actions of the employee which have elements of acts entailing criminal prosecution.

Trade union regulation

Trade Unions are afforded legal protection under Kazakhstani law, and their right to exist and act is also protected by the Constitution (Article 23 of the Constitution). The legal framework for the activities of trade unions in Kazakhstan is formed by the Law on Trade Unions (April 9, 1993), the Labour Law (December 10, 1999), the Law on Collective Labour Disputes and Strikes (July 8, 1996), and a number of other Acts adopted by the President, the Government, and parliament.

The Law on Trade Unions defines the legal authority of trade unions and outlines, *inter alia*, the process of collective bargaining in which such trade unions may represent employees that are members of those trade unions. Any Kazakhstani or foreign citizens residing and employed in Kazakhstan and possess common professional or trade interests, may form trade unions with the purpose of protecting their rights and economic interests as employees. According to Article 8 of the Law on Trade Unions, at least ten employees are needed to form a trade union. The management of an enterprise may not discriminate against employees because they belong to a union (Article 7 of the Law on Trade Unions).

Once properly organized, a trade union may collectively bargain with the management of the enterprise, negotiate collective labour agreements, oversee work conditions and safety of its members, and perform other activities aimed at protecting rights of its members (Article 10 of the Law on Trade Unions).

A trade union has a broad authority under the law, to oversee observance by the enterprise, of all aspects of the collective labour agreement as well as the enforcement of statutory labour norms. A participation or consent of a trade union may also be required for certain actions by the enterprise, where such consent is provided for in the collective labour agreement.

Collective bargaining

According to Article 32 of the Labour Law, one or several employers (their representatives) and one or several trade unions or employees who are not members of any trade union but who formed their organization, may hold collective bargaining in order to conclude the collective agreements.

The employer is obliged to bargain with all representatives of the parties concluding the collective agreement. The action of the collective agreement extends to the employees on whose behalf the collective agreement was signed (Article 32 of the LL).

A bilateral commission is formed for the bargaining with equal representation of both parties. Provisions of the collective agreements cannot restrict any rights of the employees, impair conditions of their labour and violate guarantees provided for by laws and regulations. The commission determines the contents of the collective agreement. The collective agreement is to have provisions concerning the following issues:

time of its validity; procedure of supervision of its fulfilment;
liability for non-fulfilment of terms and conditions of the agreement;
procedure of making modifications and supplements to the agreement.

Initiative of developing the draft collective agreement and tabling it to the consideration of the commission may belong to either party. The draft is subject to obligatory discussion by the employees of the establishment and the employees themselves determine the ways in which the draft is to be discussed. The draft is finalized by the commission with due account for the remarks and proposals suggested (Article 34 of the LL).

Article 35 of the Labour Law stipulates the validity and sphere of application of the collective agreement. The collective agreement is concluded for a term determined by the parties. It comes into force at the date of signing, unless provided otherwise by its provisions. The agreement is binding upon the parties and remains valid and effective in case of any change of structure and composition of the managing body of the establishment. The collective agreement remains effective for the period of reorganization (amalgamation, merger, division, isolation, transformation) of the establishment. The collective agreement can thereafter be revised on the initiative of one of the parties.

In the event of an establishment changing ownership, the validity of the collective agreement remains for three months. During this period, the parties are empowered to start bargaining for conclusion of a new collective agreement or retention, modification or supplementing of the existing one. In the event of liquidation or

bankruptcy of the establishment, the collective agreement becomes invalid from the date of adoption of a corresponding decision regarding the liquidation or bankruptcy.

Modifications of and supplements to the collective agreement during the period of its validity are made only by mutual consent of the parties in line with the procedure stipulated in the collective agreement. The representatives of the parties are obliged to familiarize the employees with the collective agreement and to keep them informed about its fulfilment.

Dispute settlement

The Labour Law of Kazakhstan provides for different settlement procedures depending on whether the dispute is individual or collective. Individual dispute settlement is regulated mostly by the Labour Law, while collective labour disputes are resolved in accordance with two laws, the Law on Collective Labour Disputes and Strikes, and the Labour Law.

Labour Law provides that disputes may be resolved by agreement between the parties or through the courts of general jurisdiction (Article 97 of the LL). The Law on Collective Labour Disputes and Strikes provides several specific possibilities of resolving collective labour disputes, such as labour arbitration (Article 6 of the Law on Collective Labour Disputes and Strikes) and mediation (Article 7 of the Law on Collective Labour Disputes and Strikes).

According to Article 98 of the Labour Law, labour disputes may be considered by a conciliation commission if the parties reach such agreement. The conciliation commission is formed on parity basis from the equal numbers of representatives of the employer and employees by a mutual decision of the parties. The employees' representatives are elected to the conciliation commission by a general meeting (conference) of the establishment. The employer's representatives are appointed by the director of the establishment. Organizational and technical support of the conciliation commission is to be provided by the employer (Article 99 of the LL).

The conciliation commission considers the claimant's petition within three days from its filing. By result of the consideration, the commission adopts a decision, which is issued to the claimant. The decision of the conciliation commission to the satisfaction of the claimant is to be executed by the adverse party within three days (Article 100 of the LL). It is also possible to resolve collective labour disputes through a court. In accordance with Article 101 of the Law on Collective Labour Disputes and Strikes, when employees bring to court an action for claims out of labour relations, they are exempt from payment of the court expenses to the public revenue (state fees and costs pertinent to trial).

Strikes and lockouts

The right to strike is recognized by the Kazakhstani Constitution (Article 24 of the Constitution). The Law on Collective Labour Disputes and Strikes of July 1996 stipulates the procedures applicable to holding strikes. Article 1 of this law defines a strike as full or partial tie-up of employees (non-appearance at work, non-fulfilment of working duties) by members of the work collective, either during a definite period

of time or until certain claims are met by the employer. Participation in a strike is voluntary and no individual can be forced to participate or to refuse participation in a strike (Article 11 of the Law on Collective Labour Disputes and Strikes).

The decision to declare a strike is made by a general meeting (conference) of the employees of an enterprise and is considered adopted if not less than two-thirds of the total number of employees of the enterprise. A written notice about the forthcoming strike has to be submitted to the employer at least 15 days in advance (Article 12 of the Law on Collective Labour Disputes and Strikes).

During the strike, minimum essential services, the stoppage of which may create an immediate threat to life and health of the population have to be ensured. A list of such services is defined by the respective state bodies (Article 16 of the Law on Collective Labour Disputes and Strikes).

In accordance with article 14 of the Law on Collective Labour Disputes and Strikes, a strike may be considered illegal in the following cases:

When a strike has political motivation (such as claims to change the constitutional order, dissolution of state bodies etc.); and

When a strike is announced without following the procedure, prescribed by law (such as prior written notice about the forthcoming strike etc.).

Decision to declare a strike unlawful may be taken by a respective court. Participation in a legal strike cannot be considered as a breach of labour discipline or as a ground for termination of the contract. The employer has the right not to pay wages to employees for the period of their participation in the strike (Article 17 of the Law on Collective Labour Disputes and Strikes).

Web links

[ILO conventions ratified by Kazakhstan](#)

[Constitution of the Republic of Kazakhstan \(English\)](#)

[Presidency of the Republic of Kazakhstan \(English and Russian\)](#)

[Ministry of Labour of Kazakhstan \(Russian\)](#)

[Official Gazette of Kazakhstan \(Russian\)](#)

[Confederation of Free Trade Unions of Kazakhstan \(Russian\)](#)

[Confederation of Employers of Kazakhstan \(Russian\)](#)

[ILO Database of National Labour Legislation](#) (English)