

## Law and Practice

### Contributed by:

Yuliya Chumachenko, Alexandr Chumachenko and  
Anton Alexeyev

**AEQUITAS** see p.19



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## 1. INTRODUCTION

### 1.1 Main Changes in the Past Year

Many amendments intended to introduce new legal institutes and mechanisms, to provide additional benefits and guarantees to employees, to clarify certain procedural issues and to reflect legislative amendments in other spheres have been introduced into the Kazakhstan legislation over the last 12 months. Below are the most important amendments.

- For the purpose of the automated accounting of employment contracts, labour activities and numbers of employees, Kazakhstan created the Unified Accounting System of Employment Contracts (UASEC). Starting from September 2020, employers must enter the following data into UASEC on the labour exchange's website: parties' details, labour function (position, specialism, profession, qualification), place of work performance, employment contract term, work commencement date, date of employment contract and its sequence number, including any changes in such data, as well as information about termination of an employment contract. In addition to serving the function of the state's control over the conclusion of employment contracts by employers with all employees, application of this system implies the provision of access to employers to data concerning the labour history of a candidate for a vacant position.
- The labour legislation of Kazakhstan now contains a concept of using leased labour (outstaffing), pursuant to which a sending party (which may only be a Kazakhstan legal entity or a branch of a foreign company providing outstaffing services) sends its employees to a host party (individual, individual entrepreneur or legal entity) under an outstaffing agreement for the performance of their labour functions in the interests and

under the management and control of the host party. Outstaffing does not entail the creation of labour relations between the host party and the employees of the sending party, and all rights and obligations of an employer with respect to such employees (including with respect to payment of salary) are borne by the sending party subject to special guarantees provided to such employees by legislation.

- The labour legislation of Kazakhstan now contains provisions concerning the possibility to enter into an employment contract and for the employer to issue the employer's acts in electronic form; however, for this purpose, employers and employees need to obtain an electronic digital signature at the National Certification Authority of Kazakhstan. Please keep in mind that, strictly from the legal point of view, neither the corporate electronic digital signatures of organisations nor the digital handwritten signatures of employees are allowed options for the signing of employment contracts or employer's acts in electronic form.

### 1.2 COVID-19 Crisis

Kazakhstan has actively adopted all possible measures to reduce the spread of COVID-19 and reactivate business. The forced lockdowns in 2020 adversely affected the employment market. Many businesses were closed, which led to mass dismissals of employees. To support the citizens, the state has financed a variety of employment programmes, in order to stem the tide of unemployment and support business.

In order to prevent any resurgence in the COVID-19 incidence rate, entrepreneurs were able to resume activities only if they complied with the sanitary rules, and a preliminary readiness inspection with visits by state commission members was stipulated for certain types of facilities (large trading areas).

To regulate the situation under the conditions of constant fluctuations in the incidence rate, Kazakhstan developed a system of criteria for restricting the work of social and economic business facilities. Depending on the situation in a specific region, the required restrictions are promptly put in force, which allows for the prompt reduction of the incidence rate.

Furthermore, Kazakhstan developed special sanitary requirements for business entities with respect to their types of activities, subject to the influence of certain activities on the economy and state security, which vary in strength depending on employees' risk of exposure. General requirements include the necessity for an employer to impose and for employees to comply with a requirement to wear masks, use sanitisers and observe recommended social distancing.

## **2. TERMS OF EMPLOYMENT**

### **2.1 Status of Employee**

The Kazakhstan labour legislation does not provide any specific distinctions between blue-collar and white-collar employees, and generally all employees enjoy equal rights and bear similar obligations. However, particular provisions might apply to certain categories of employees depending on their conditions of employment (eg, place of work, age or social status).

Additional benefits and guarantees, including special labour conditions, are established for the following categories of employees:

- underage employees (under the age of 18);
- disabled employees;
- women, including pregnant women, women raising children and single mothers; and

- employees involved in the performance of work with harmful, hazardous or arduous labour conditions.

### **2.2 Contractual Relationship**

An employer must conclude an employment contract with an employee before he or she commences working for the employer. Admission of an employee to work without an employment contract is prohibited and entails the employer's administrative liability. In the absence of a concluded employment contract, labour relations are deemed to have started from the moment of actual admission of an employee to work, and the employee's labour conditions are determined by the general requirements of the labour legislation.

An employment contract should be executed in writing, in the Kazakh and Russian languages (and, if necessary, in other languages), and there should be two originals, each signed by the employer and the employee. One original copy is given to the employee, and the employer keeps the other. Subject to the latest amendments to the Kazakhstan labour legislation, an employment contract may be concluded in the form of an electronic document using an electronic digital signature.

An employment contract may be entered into for either an indefinite or a definite term. Definite-term employment contracts are entered into in the following cases and under the following terms:

- for a definite term of at least 12 months (such employment contract may be extended twice, after which, in case of further labour relations, it is deemed to have been entered into for an indefinite term);
- for the period of performing certain work (such employment contracts are normally entered into for the period of implementation

- of a certain project, and the date of expiration of the term of such employment contract is the moment of accomplishment of the work determined by the employment contract);
- for the period of substitution of an absent employee (such employment contract is terminated on the day the substituted employee returns to work);
- for the term of a permitting document of a foreign employee; and
- for the period of appointment of a member of the executive body of the employer, subject to restrictions stipulated by the Kazakhstan legislation and constituent documents of the employer.

## 2.3 Working Hours

The Kazakhstan labour legislation sets out certain legal requirements pertaining to daily and weekly working hours.

### Weekly Hours

The normal number of working hours for an employee must not exceed 40 hours per week. However, a reduced number of weekly working hours is established for certain categories of employees:

- for disabled people, 36 hours per week;
- for those under 18 years old but over 16 years old, 36 hours per week;
- for those under 16 years old, 24 hours per week; and
- for employees whose working conditions have been determined to be harmful or hazardous following a special assessment of working conditions, 36 hours per week or less (depending on the type of work).

Cumulative work time accounting may be established for an employee, pursuant to which the actual number of working hours in a working week of the employee may exceed the above work time norms. In this case, the work time

norms must be complied with on average over an accounting period, which is determined by the employer and may be no more than 12 months.

### Daily Hours

There is generally a legal limit of eight hours on the length of daily working hours. However, an employee may be established cumulative work time accounting or shift work, pursuant to which the actual duration of the employee's working day may exceed eight hours. Regardless of the applied regime of work, employers must comply with a requirement for there to be a 12-hour break between the working days (shifts) of the employee; therefore, in practice, a working day (shift) of an employee normally does not exceed 11 hours.

The duration of a working day of a person in sideline employment (if such employee works the full work time norm at the primary place of work) must not exceed four hours.

### Part-Time

The Kazakhstan legislation provides the possibility to establish part-time working for an employee, ie, to reduce the employee's personal working day and/or number of working days in a working week. Unlike the reduced work time norm, establishment of part-time working for an employee entails the proportionate reduction of the employee's remuneration as compared with other employees working the full work time norm. In all other respects, a part-time employee enjoys the same rights and bears the same obligations as other employees.

### Overtime

Employers may ask employees to work overtime subject to their written consent. Overtime is subject to separate accounting and payment in an increased (1.5) amount. Overtime must not exceed two hours (one hour for employees

involved in work with harmful, arduous or hazardous labour conditions) per day, 12 hours per month and 120 hours per year. Disabled persons, underage children and pregnant women are not allowed to work overtime.

### **Flexible Work Time**

The Kazakhstan legislation provides the possibility for an employee to perform work under a flexible work time regime. According to such a regime, the following must be established:

- fixed work time accounting with establishment of the period when the employee must be present at the workplace (eg, each working day from 9.00 to 13.00);
- flexible work time, during which the employee performs the work at his or her own discretion (eg, from 14.00 to 22.00);
- accounting period (no more than six months) during which the employee's work time norm must be complied with on average, depending on the employee's category.

## **2.4 Compensation**

### **Minimum Salary**

In Kazakhstan, employees are entitled to a salary not lower than the minimum established by law. The minimum monthly salary amount is annually established for the following financial year by the Law of the Republic of Kazakhstan on National Budget. At present, the minimum monthly salary must not be less than KZT42,500 (approximately USD99). The minimum monthly salary does not include additional payments or increments, compensatory or social payments, bonuses or other incentive payments, and is paid in proportion to the time worked.

The law does not provide for the automatic adjustment of salaries. However, the minimum salary is reviewed annually to ensure that it keeps pace with consumer prices and that employees' purchasing power is secured at a

minimum level. Private organisations may adjust salaries in line with inflation using the procedures set out in collective bargaining agreements or internal policies.

In 2020, the Ministry of Labour and Social Protection of the Population of Kazakhstan raised the issue of the necessity to introduce mandatory indexation of salary. However, no specific proposal or draft amendment to legislation has been put forward for discussion yet.

### **Incentive Payments**

In Kazakhstan, employee incentive systems are determined by employers. Employers may provide bonuses to employees on a one-time basis (eg, bonuses following the annual (or six-month) performance results, according to the results of performing certain work, bonuses in connection with holidays, etc), and in accordance with the labour remuneration and incentive system approved in an organisation.

One-time bonuses not regulated by documents are of a voluntary nature for an employer, while documented incentive systems are binding on employers. Therefore, if an employer establishes any incentive system in its organisation, to protect its interests the bonus payment procedure and conditions must be regulated in detail to the maximum extent possible.

In practice, the amounts of bonuses are often established in proportion to the base salaries of relevant employees. No limitations on the amount of bonuses are established by legislation. However, in the case of establishing regular bonuses to employees (eg, in the form of increments to a monthly base salary for the fulfilment of the employee's tasks), the share of the main part of salary (ie, part received by an employee for the fulfilment of the work time norm) must be not less than 75% of the total salary (without regard to one-time incentive payments) as

compared with the variable part (regular incentive payments).

## 2.5 Other Terms of Employment

### Paid Annual Labour Leave

Under the Kazakhstan legislation, an employer must provide an employee with paid annual labour leave. This leave includes main and additional paid annual labour leaves. The employees are guaranteed to be granted the main leave with a duration of no less than 24 calendar days (for certain professions, for example, for teachers, the minimum duration of the main leave is greater). The durations and cases of granting additional leave are determined by legislation (eg, to disabled employees or employees working under harmful, hazardous or arduous labour conditions).

The leave can be taken continuously or divided into parts by agreement between the employee and employer. One of the parts of the leave must be at least 14 calendar days. Full-time employees and part-time employees have equal rights to paid annual labour leave.

It follows from the title that an employer must pay an employee for paid annual labour leave. The payment is made based on the number of days of work occurring within the period of granted leave, multiplied by the average daily salary of the employee. The average daily salary of the employee is calculated by dividing the employee's salary accrued over 12 months before granting the leave to the employee by the number of the employee's days of work during the said period. If the employee has worked for less than 12 months at the time of granting the leave, only the period actually worked by the employee is used for the purposes of calculation.

### Social Leave

In Kazakhstan, employees are granted the following types of social leave:

- unpaid leave (according to the general rule, this leave is granted upon an agreement between an employee and an employer, but in certain cases, including marriage registration, childbirth, death of close relatives of the employee, etc, the employer must grant leave with a duration of up to five calendar days);
- educational leave (granted to employees studying at educational organisations to prepare for and pass exams, perform laboratory work, prepare and defend the graduation work, or undergo military reserve training programmes);
- leave in connection with pregnancy and childbirth (maternity leave) or adoption of a newborn child (pregnant women are granted leave with a duration of 70 calendar days before the childbirth and, depending on the medical indications, from 56 to 93 calendar days after the childbirth; adoptive parents are granted leave from the moment of adoption of a child until the expiration of 56 calendar days of birth);
- unpaid childcare leave until the child reaches the age of three years;
- leave for medical screenings with a duration of no more than three business days within a year; and
- leave for medical registration in connection with pregnancy until 12 weeks with a duration of no less than three business days.

Granting of social leave with the exceptions listed above is the employer's obligation. According to the general rule, social leave is not paid by an employer; however, in certain cases (maternity leave, leave in connection with the adoption of a newborn child, childcare leave until the child reaches the age of three years), employees



receive payments from the state social insurance fund.

### **Temporary Incapacity**

For a period of temporary incapacity confirmed by a medical opinion in the form established by legislation, an employee is released from work with preservation of employment. Depending on the employee's sickness, an employer may pay a social allowance to the employee during such period. The maximum amount of such allowance is limited by legislation and, according to the general rule, is equal to 15 monthly calculation indices (KZT43,755, or approximately USD102) per month. In certain cases (personnel of diplomatic services, veterans of the Great Patriotic War and persons deemed equal to them) the allowance may be paid in the amount of the employee's full salary for the period of temporary incapacity.

### **Confidentiality and Non-disparagement**

The labour legislation of Kazakhstan does not provide any special provisions concerning confidentiality and non-disparagement, except for the general obligation of employees not to disclose information constituting state secrets or official, commercial or other law-protected secrets coming to their knowledge in connection with the performance of their labour duties. The rights and obligations of an employee and an employer with respect to this issue may be set out and, in practice, are often set out in internal documents of the organisation (employer's acts) and/or in a separate agreement.

### **Employee Liability**

In the framework of labour relations with an employer, employees in Kazakhstan bear disciplinary liability (for violating their labour and official duties stipulated by legislation, employment contract, collective bargaining agreement, social partnership agreements or employer's acts) and material liability (for causing material damages

to an employer, including any expenses incurred by the employer in connection with a failure to perform or improper performance of obligations by an employee). Other types of liability do not apply to employees under the labour legislation.

Disciplinary liability is the imposition of one of the following disciplinary sanctions on an employee: warning, reprimand, severe reprimand and cancellation of an employment contract. The last sanction is used only in cases expressly stipulated by legislation (eg, repeated failure to perform or improper performance of labour duties after incurring disciplinary liability, presence at a workplace in a condition of alcohol intoxication, absence from a workplace without a valid reason for more than three consecutive hours in a working shift, etc). A mandatory condition for making an employee face disciplinary liability is the employer's compliance with the procedure established by legislation.

As part of an employee's material liability, the employee compensates for the employer's real damages. Material liability of an employee is excluded if the damages were occurred due to force majeure circumstances, extreme necessity, justifiable defence or the employer's violation of conditions ensuring the safety of property.

## **3. RESTRICTIVE COVENANTS**

### **3.1 Non-competition Clauses**

The labour legislation of Kazakhstan provides the possibility for an employer to enter into a non-compete agreement with an employee. However, the legal regulation of this issue is extremely limited. Specifically, the Labour Code of Kazakhstan determines that a non-compete agreement establishes an obligation of an employee not to take actions capable of causing damage to an employer. The Labour Code is silent as to

any specific restrictions which may be imposed on the employee in connection therewith. The relationship between such restrictions and the principle of freedom of labour (the employee's right to be free in selecting labour or agreeing to labour without any discrimination or compulsion, to dispose of his or her own ability to work and to select his or her profession and form of activities) is unclear. In practice, such non-compete agreements are rarely entered into and used mainly by companies with foreign participation.

As regards the requirements for the conclusion of non-compete agreements, the Labour Code establishes that the organisation in question must preliminarily develop and approve a model form of such an agreement and a list of positions of employees eligible to enter into those non-compete agreements.

Please bear in mind that the corporate legislation of Kazakhstan provides restrictions on those activities of the members of the executive body of a legal entity (who are the employees of such legal entity according to the labour legislation) which may harm an employer. Therefore, non-compete agreements with such employees should be entered into in order to settle other issues not regulated by legislation.

### **3.2 Non-solicitation Clauses – Enforceability/Standards**

The labour legislation of Kazakhstan does not expressly regulate the issue of conclusion of non-solicitation agreements. However, in practice, relevant provisions are normally included by companies in non-compete agreements. In the absence of detailed legal regulation, the non-solicitation conditions are determined by the parties' agreement.

## **4. DATA PRIVACY LAW**

### **4.1 General Overview**

In Kazakhstan, the requirements relating to personal data protection are governed by a relevant local law. The Kazakhstan Constitution determines general approaches with respect to the rights of citizens to privacy, personal and family secrets, honour and dignity protection. As regards the protection of personal data, the Labour Code of Kazakhstan determines that an employer must ensure the protection of the personal data of employees and refers to the above law.

The personal data protection law regulates activities relating to the automated processing of personal data, or manual processing if its nature is similar to automated processing. The law defines 'personal data' as any information relating to an identified or identifiable individual who is the subject of the personal data kept electronically or by other means, including paper documents.

Personal data processing includes, without limitation, processes such as the collection, recording, gathering, storage, updating and alteration, retrieval, use, transfer (ie, dissemination, making available and accessible), anonymisation, blocking, deletion and destruction of personal data. Accordingly, the personal data of an employee may contain information including, but not limited to, the following:

- surname, name and patronymic;
- gender and age;
- physiological abilities;
- education or qualifications;
- dependent persons;
- family status; and
- previous labour history.

The Kazakhstan legislation stipulates the following common requirements for the processing of



employees' personal data based on the rights and freedoms of individuals and citizens.

- Personal data is divided into public and restricted data. Public personal data is either the data that has been classified as such by law (eg, name of an individual and place and date of birth) or by virtue of the subject's consent to use the data openly (eg, in phone directories and address books). Restricted data may be collected by an employer on the basis of the subject's written consent only.
- An employer collecting personal data about its employees must produce a list of personal data required and sufficient for the objectives pursued by an owner and/or operator of the database containing personal data. The employees' personal data must be processed only in the cases and for the purposes specified in such list and subject to applicable legislation. In determining the value and content of the data to be processed, the employer must follow the Constitution and the labour and other legislation of Kazakhstan.
- According to the general rule, dissemination of personal data is allowed, provided only that this does not violate the subject's rights and liberties or affect the legitimate interests of other third parties and/or legal entities. In instances that are beyond the purposes of collecting personal data predetermined by the operator, it is allowed to disseminate personal data provided that there is the consent of the subject or his or her legal representative. The Kazakhstan legislation allows the transfer of personal data to third parties, including out of Kazakhstan (cross-border transfer of personal data) if there is the respective consent of the subject or his or her legal representative.
- Owners and operators of databases containing personal data and third parties (including persons owning servers and providing services involving the rent thereof in order to store personal data on such servers) must store all collected personal data in the databases, which must be located in the Kazakhstan territory (so-called database localisation requirement).
- Protection of employees' personal data against unauthorised use and loss must be ensured by the employer, and the employer is accountable for this. In order to ensure security and confidentiality of the employees' personal data, the employer must undertake legal, organisational and technical measures in accordance with requirements of the Kazakhstan legislation.
- An employer must have a policy on personal data processing and the measures it will take to ensure the security and confidentiality of the employees' personal data. Employees and their representatives must be made familiar with the employer's policy on personal data processing and their rights and obligations in relation thereto. The employees must confirm that they have been made aware of this information by signing relevant documents.
- The personal data storage period and, accordingly, period of processing is generally determined by the date of achieving the purposes of its collection and processing, unless otherwise stipulated by the Kazakhstan legislation. Once such period expires, the owner of the database containing the personal data (operator, third party) must destroy the relevant personal data.

## **5. FOREIGN WORKERS**

### **5.1 Limitations on the Use of Foreign Workers**

Kazakhstan's policy in the sphere of labour migration is intended to ensure the protection of the internal labour market and employment of the local population, and the development of the

capacity of the workforce in accordance with the economic demands of the country.

Foreign employees (except for employees who are the citizens of EAEU member states, employees working as CEOs or their deputies in Kazakhstan companies with 100% foreign participation, CEOs of the Kazakhstan branches/representative offices of foreign legal entities, and some other employees) may carry out labour activities in the Kazakhstan territory based on a work permit. The size of the foreign labour force engaged in Kazakhstan is subject to a numerical quota. The authorised agency issues work permits in the case of absence of a possibility to satisfy the demand for labour on account of the domestic labour market and in complying with certain statutorily established relationships between foreigners and Kazakhstan citizens on the staff-list number of employees of a company.

The terms for which employment contracts are entered into with foreign employees cannot exceed the effective term of a work permit.

The issued work permits cannot be transferred to other employers and remain in effect only in the territory of a respective administrative and territorial unit. An employer may send a foreign employee on a business trip to a company located in the territory of another administrative and territorial unit for a term of no more than 90 days in total within one calendar year.

The effect of work permits terminates upon their expiration or in the event of their revocation, as well as in the event of the termination of activities or liquidation of an employer and in some other instances. A work permit may be revoked in consequence of hiring foreign employees to positions other than those specified in a work permit or the employer's failure to comply with specific conditions for issuing work permits and/or conditions pertaining to local content in staff.

## 5.2 Registration Requirements

The Kazakhstan legislation provides the possibility of engaging foreign labour to carry out labour activities under one of the following options.

### Established Quota

According to the general rule, a work permit is obtained on a fee-paid basis (tax levy) within the established quota for a specific administrative and territorial unit. For the purpose of annual quota establishment, employers partake in its formation by filing applications for foreign labour engagement.

To determine the procedure and conditions of issuing and/or extending work permits, the Kazakhstan legislation provides for the following categories of employees:

- first – CEOs and their deputies;
- second – CEOs of structural subdivisions;
- third – specialists; and
- fourth – qualified workers.

The term of a work permit depends on the category of foreign employees and varies from 90 calendar days to three years, with a possibility to extend it for the same term for employees in the first and second categories.

### Intra-corporate Transfer

A foreigner working as a CEO, manager or specialist in a legal entity organised in the territory of a WTO member state located and acting outside Kazakhstan may be transferred to branches/representative offices or subsidiaries of such legal entity organised in Kazakhstan. Such employee must obtain a relevant work permit issued for a term determined by an employment contract, but for no more than three years with the right to extend for one year.

### **Independent Job Placement**

Foreigners may themselves find employment in Kazakhstan without obtaining the above work permits. Such right is confirmed by a certificate specifying that the foreigner's qualifications suits for independent job placement with respect to specialisms in demand (engineers, IT specialists, medical employees and others that possess the highest degree of qualification), which is issued by an authorised governmental agency for a term of no more than three months with the right of extension of the term of employment, but for no more than three years.

The migration legislation provides a visa regime of stay for foreigners in Kazakhstan. Foreign employees and their family members arriving in Kazakhstan obtain a work visa (except for the countries enjoying visa-free entrance).

Employers accepting a foreign employee must inform the migration authority concerning the foreigner's arrival at the place of his or her permanent or temporary residence within three business days. If an employee arrived under the visa-free procedure, it is necessary to execute a temporary residence permit (TRP) for the period of his or her stay in Kazakhstan (within the effective period of a work permit, but, in any case, for a term not to exceed the term of the foreigner's national passport).

Since a foreign employee acquires the status of a tax resident of Kazakhstan, he or she is subject to tax registration with assignment of an individual identification number (IIN).

If the host party fails to perform its obligations to timely notify about the immigrants staying with the host party, take measures on execution of documents for their right to stay in Kazakhstan and ensure their departure from Kazakhstan upon expiration of the permitted period of stay, the Kazakhstan legislation provides for adminis-

trative liability. If the host party's liability is established two or more times within 12 consecutive calendar months, this serves as a ground for the authorised agency's refusal to consider invitations of foreigners to Kazakhstan.

## **6. COLLECTIVE RELATIONS**

### **6.1 Status/Role of Unions**

The labour legislation recognises trade unions as the employees' representatives in their relations with an employer and the state in the framework of social partnership.

Trade unions are independent in their activities from governmental authorities of all levels, political parties and employers; they are neither controlled by nor accountable to them.

Trade unions are set up under the industry-based principle with the established system of vertical subordination of trade union organisations, ie, small trade unions must join a major industry trade union, which in turn is a member of a national association of trade unions.

The key functions of trade unions are the protection of social and economic rights of employees, participation in social partnership at the national, industry and regional levels, and monitoring the implementation of the adopted resolutions at the organisation's level. Other rights of trade unions may be established by the laws of Kazakhstan, agreements and collective bargaining agreements.

### **6.2 Employee Representative Bodies**

In the absence of a trade union at the employing organisation, the employees may appoint so-called elective representatives. The elective representatives are elected at a general meeting (conference) of employees by the majority

of votes of participants. There must be at least two-thirds of the employees attending the meeting (delegates of conference).

The labour legislation allows for joint representation of interests by both a trade union and elective representatives if less than 50% of employees in an organisation are the members of a trade union as compared with the staff-list number of employees. Furthermore, employees who are not trade union members may entrust an elective representative to represent their interests in a specific issue.

Elective representatives of employees may do, among other things, as follows:

- represent and defend the labour rights and interests of employees;
- conduct collective negotiations with an employer on drafting and entering into collective bargaining agreements;
- according to collective bargaining agreements, visit workplaces to examine and take measures in order to ensure normal labour conditions; and
- participate in the settlement of labour disputes between an employee and an employer.

## 6.3 Collective Bargaining Agreements

The use of collective bargaining agreements has been actively promoted in Kazakhstan since 2008 as part of the presidential campaign “Enter into a collective bargaining agreement”. Thanks to the efforts of trade unions and authorised labour agencies, to date, more than 97% of medium-sized and large enterprises are covered by collective bargaining relations.

A collective bargaining agreement is not a mandatory document in an organisation. Only subject to the initiative of employees or the employer must the second party begin negotiations on entering into a collective bargaining agreement.

The parties to a collective bargaining agreement are an employer and the employees represented by their representatives.

The content of a collective bargaining agreement is determined by the labour legislation in terms of both its mandatory and optional components. Mandatory conditions include rate setting, labour remuneration, work time duration, occupational health and safety issues, and others. Recommended conditions include additional social guarantees and compensations.

If an employer violates the conditions of a collective bargaining agreement, this may entail application of administrative sanctions to the employer in the form of fines.

## 7. TERMINATION OF EMPLOYMENT

### 7.1 Grounds for Termination

Labour relations are terminated with employees in Kazakhstan only based on the grounds and pursuant to the procedure stipulated by legislation.

Grounds for the employment contract termination are:

- agreement of the parties;
- expiration of an employment contract;
- employer’s initiative;
- employee’s initiative;
- transfer of an employee to another employer;
- circumstances beyond the parties’ control;
- employee’s refusal to continue labour relations;
- transition of an employee to the elective work (position) or appointment to a position which excludes the possibility to continue labour relations; and

- violation of the conditions for entering into an employment contract.

Lawfulness of dismissal under any of the above grounds is achieved on condition of the presence of the expression of will of one of the parties, relevant legal fact (eg, absence at a workplace for more than three consecutive hours or employer liquidation) and compliance with the established procedure.

Collective staff reduction takes place, as a rule, in the case of mass (more than two employees) staff reduction or employer liquidation.

## 7.2 Notice Periods/Severance

### Notice

A number of grounds for employee dismissal require the mandatory notification of the other party. The courts acknowledge that a violation of the notification procedure may entail recognition of a dismissal as illegal. An important aspect in this case is the compliance with the specific procedure for each dismissal ground.

Mandatory notice is stipulated in the following cases:

- in case of dismissal on the employer's initiative (in case of staff reduction or employer liquidation, and in case an employee reaches the age of retirement – at least one month prior; in case of reduction in the volume of production, work performed and services provided entailing deterioration of the employer's economic condition – 15 business days prior, unless an employment contract or a collective bargaining agreement provides for a greater notice period);
- in case of dismissal on the employee's initiative (an employee must notify an employer at least one month prior, unless a greater period is stipulated by an employment contract); and

- in case of dismissal by agreement of parties (please see **7.4 Termination Agreements** for a detailed description of the procedure).

### Compensation in Connection with Loss of Job

An employer makes compensatory payments in connection with the loss of a job in the amount of an average salary for one month in the following cases:

- employer liquidation;
- staff reduction; and
- employer's failure to fulfil the conditions of an employment contract.

In case of dismissing an employee as a result of reduction of the volume of production, work performed or services provided entailing deterioration of the employer's economic condition, the employer pays compensation in the amount of an average salary for two months.

An employment contract, a collective bargaining agreement or an employer's act may provide for a greater compensatory payment in connection with the loss of job.

## 7.3 Dismissal For (Serious) Cause (Summary Dismissal)

### Summary Dismissal

As of May 2020, the Kazakhstan legislation no longer contains any regulations similar in their construction to summary dismissal and, accordingly, employee dismissal without a ground or without a sufficient ground is illegal. Please note that last year Kazakhstan excluded a rule from the Labour Code allowing an employer to dismiss an employee at any time, provided that the employee's employment contract contained a special provision. In turn, an employee received a monetary compensation, the amount of which was established by the parties in the employment contract. This rule existed for slightly more

than four years and has been excluded due to the protests of trade unions because of the weak position of an employee in the course of entering into a contract.

## Dismissal for Serious Cause

The cases where dismissal for serious cause can apply are expressly regulated by the labour legislation and have a similar application procedure. An employer may cancel an employment contract with an employee in cases where the employee:

- was absent from the workplace without a valid reason within three or more consecutive hours in a working day (working shift);
- was at work in a condition of alcoholic, narcotic, psychotropic or other intoxication;
- violated the occupational health and fire safety rules, or the rules for safe movement of a vehicle, and this entailed or could have entailed severe consequences to life and health of employees, including at-work injuries and accidents;
- stole someone's property at the place of work, or intentionally destroyed or damaged someone's property;
- serviced money or values-in-use of the employer and used his or her official position for his or her own interests (or in the interests of a third party) despite the employer's interests and in exchange for material or other benefits for himself or herself or other persons, or committed wrongful actions (or omissions) where such actions (or omissions) serve as a ground for an employer to no longer trust such employee;
- performed pedagogic functions and conducted an amoral offence which is not compatible with further performance of such work;
- disclosed information constituting state secrets and other law-protected secrets coming to his or her knowledge in connection with the performance of his or her labour duties;
- had a disciplinary sanction and repeatedly failed to perform his or her labour duties without valid reasons;
- provided the employer with patently false documents or information when entering into an employment contract or transferring to another job;
- in the case of a managing employee or his or her deputy, violated labour obligations determined by an employer's act, which entailed material damages to the employer;
- committed a corruption violation which excludes the possibility of further work;
- continued to participate in a strike after he or she was made aware of a court judgment recognising such strike as illegal or suspending the strike; or
- was absent from work for more than one month for the reasons unknown to the employer.

With respect to almost all of the above grounds, an employment contract is cancelled under the procedure for applying a disciplinary sanction. Such procedure obligates an employer to ask an employee to submit a written explanation of the detected violation. The employee must submit such explanation to the employer within two business days. If the employee refuses to submit an explanation, the employer is entitled to prepare an act of the employee's refusal to submit an explanation and cancel the employment contract. In the case of objective absence of the employee's fault, the employer terminates the dismissal procedure and, vice versa, if the employee's fault has been completely proven, the employment contract is cancelled.

In addition to compliance with the disciplinary procedure, certain cases (eg, strike, corruption, theft) require a judgment or sentence confirming the employee's fault.



The Kazakhstan legislation allows an employee to initiate his or her own dismissal if an employer violates the conditions of the employment contract. In this case, the employee must notify the employer of such fact. In the event of the employer's failure to rectify the violations within seven business days, the employee may cancel the employment contract, having notified the employer in writing at least three business days prior. In this situation, the employer must pay compensation to the employee in the amount of the employee's average salary for one month, unless a greater compensatory payment is stipulated in the employment contract.

#### **7.4 Termination Agreements**

Cancellation of an employment contract by agreement of parties seems to be the most favourable ground for the termination of labour relations with employees. Both an employee and an employer may initiate the cancellation of an employment contract.

As a rule, the risk of a subsequent challenge to a dismissal by agreement of the parties is absent or low, which is an advantage for an employer. Often employers who have other grounds to terminate relations with an employee (eg, reduction or dismissal for serious cause) apply the agreement of parties, paying compensation to an employee (sometimes even greater than the compensation stipulated under the existing grounds), thus minimising the risks or expressing their gratitude to the employees for the time worked for a company.

Furthermore, such agreement allows the execution by documents of the conditions and obligations of the parties accompanying the dismissal (return of property and documents of the employer, transfer of files, confidentiality obligations and other issues).

The procedure consists of the following stages (in a situation where the initiator is the employer):

- the employer serves a notice to the employee with a proposal to cancel the employment contract by agreement of parties;
- the employee must submit his or her response within three business days. He or she may agree with or reject the employer's proposal. In the latter case, labour relations remain without changes; there is no legal mechanism allowing an employer to obligate an employee to accept the proposal and sign the agreement;
- if the employee agrees – discussion of the conditions and the date of the cancellation of the employment contract;
- signing of an agreement on the cancellation of the employment contract; and
- issuing of an order on the cancellation of the employment contract and serving/sending a copy thereof to the employee (within three business days of the date of issue).

#### **7.5 Protected Employees**

The Kazakhstan legislation ensures the protection of citizens of certain categories in the case of dismissal on the employer's initiative. Thus, an employer is not allowed to dismiss an employee during a period of his or her temporary incapacity or leave (except for cases of employer liquidation, violation of labour duties by the head or deputy head of the executive body of the employer, early termination of powers of the head of the executive body, or employee's absence from work for more than two consecutive months due to temporary incapacity).

The protected categories are:

- pregnant woman (not to be subject to reduction or dismissal in connection with expiration of the term of an employment contract if there is a certificate of pregnancy with a term of 12

or more weeks; in the latter case an employer must extend the term of the employment contract until the date of completion of the childcare leave);

- presence of a child of tender years (a woman who has a child under the age of three cannot be dismissed; if there is an employee who has a child under the age of three and wishes to use his or her right to unpaid childcare leave, an employer must extend the employment contract term until the date of accomplishment of the childcare leave, except for the cases of substituting a temporarily absent employee);
- single mother (an unmarried woman raising a child under the age of 14 or a disabled child under the age of 18 cannot be dismissed);
- employee raising a child without a mother (a person raising a child under the age of 14 or a disabled child under the age of 18 without a mother cannot be dismissed);
- employee of pre-retirement age (if an employee has less than two years until the age of retirement, he or she cannot be dismissed without the positive resolution of a commission made up of an equal number of representatives of the employer and the employees of the organisation); and
- employee holding a position with the elective trade union body (if an employee holds a position with the elective trade union body without release from the primary job, he or she cannot be dismissed without approval by the trade union body).

## 8. EMPLOYMENT DISPUTES

### 8.1 Wrongful Dismissal Claims

First of all, the ground for filing a claim of wrongful dismissal is illegal cancellation of an employment contract, including in the absence of a reason for dismissal or insufficiency of the applied

ground. One of the grounds often applied in practice is the employer's violation of the dismissal procedure, for example, failure to observe the notice period, disregard of the employee's explanation, etc.

In practice, employees also refer to discrimination resulting in illegal dismissal.

If the unlawfulness of a dismissal is proven, the court reinstates an employee at work and obligates an employer to pay the employee for the forced absence from work, but for no more than six months.

If the dismissal is legal, but the employer mistakenly applied an incorrect ground, a claim is filed to change the wording of the dismissal order. Such mistake does not result in the employee's reinstatement; however, the court obligates the employer to change the dismissal ground.

### 8.2 Anti-discrimination Issues

Prohibition of discrimination in the labour sphere is one of the underlying principles of the Kazakhstan labour legislation. For these purposes, Kazakhstan ratified the Discrimination (Employment and Occupation) Convention of the International Labour Organization.

Nobody can be exposed to any discrimination when implementing labour rights due to origin, social, official and property position, gender, race, nationality, language, attitude to religion, beliefs, place of residence, age or physical defects, or membership of public associations. In certain cases, the Kazakhstan legislation establishes specific preferences and restrictions that, in general, will not be considered discriminatory, in particular:

- preferences and restrictions established due to the specifics of certain jobs; and

- preferences and restrictions established in order to protect certain groups of employees.

The practice involving discrimination claims in the labour sphere is not extensive in Kazakhstan, first of all because of the complexities of proving the elements of a violation. The main ground for filing a claim with accusations of discrimination may be the fact of illegal dismissal or disparity in labour conditions between foreign and local employees.

## **9. DISPUTE RESOLUTION**

### **9.1 Judicial Procedures**

The Kazakhstan legislation provides for mandatory pre-trial consideration of labour disputes with employees. Individual labour disputes (ie, between an employer and a specific employee) are considered by the conciliation board – a permanent body set up within the employing organisation consisting of an equal number of representatives of employees and management of the employer. The following labour disputes are not to be considered by the conciliation board:

- disputes in organisations which are micro-business entities (average annual number of employees does not exceed 15 people, and average annual income does not exceed 30,000 monthly calculation indices, which is approximately USD205,000 at time of writing);
- disputes in non-profit organisations where the number of employees does not exceed 15 people;
- disputes with household employees (performance of household work for the employer);
- disputes with members of the executive body of the employer; and
- labour disputes with some other categories of employees as determined by legislation.

An employee (or employer) may apply to court for consideration of an individual labour dispute only if the individual labour dispute has not been settled by the conciliation board or if its resolution is not implemented by one of the parties. Otherwise, the court will deny a relevant claim. The Kazakhstan legislation does not provide for separate proceedings for labour disputes; therefore, such disputes are considered by civil courts.

Collective labour disputes are resolved in accordance with the following procedure. The collective claims of employees are initially considered by an employer (or union of employers). If settlement of a conflict by way of negotiations fails, such dispute is subject to consideration by special pre-trial authorities. Issues which have not been settled at the pre-trial stage are submitted to court.

The mediation board is the first to consider a dispute under the pre-trial procedure. This board is set up by a joint resolution of an employer (or union of employers) and representatives of employees. If there is failure to reach an agreement at the mediation board stage, its work is terminated, and labour arbitration is formed to resolve the dispute. The composition of the labour arbitration and the dispute consideration procedure are determined by an agreement between the employer (or union of employers) and representatives of employees. A state labour inspector must be included in the labour arbitration panel.

### **9.2 Alternative Dispute Resolution**

Non-state courts (eg, commercial arbitrations and arbitration tribunals) cannot consider labour disputes. Issues that have not been settled at the mandatory pre-trial stage may be submitted for consideration to the state civil courts. The procedure for considering labour disputes with

employees is described in **9.1 Judicial Procedures**.

According to the general rule, resolutions of pre-trial authorities considering labour disputes are binding on the parties to a dispute. Nevertheless, in fact, a competent court may consider all disputable issues which arise between the parties at the very first stage of a labour dispute.

### **9.3 Awarding Attorney's Fees**

The Kazakhstan civil procedure legislation allows a prevailing party in the framework of judicial proceedings to apply for compensation by the defeated party of expenses incurred in connection with the payment for the assistance of a representative, if the representative (attorney or legal counsel) is not in labour relations with the prevailing party. However, the amount of potential compensation is limited: with respect to property claims, the total amount of such expenses must not exceed 10% of the satisfied part of a claim; with respect to non-property claims, expenses can be recovered within the reasonable limits; however, they must not exceed 300 monthly calculation indices (KZT875,100, or approximately USD2,035).

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firms. AEQUITAS advises companies on their day-to-day matters and helps resolve the most complex and intricate issues not expressly regulated by the Kazakhstan labour legislation. The firm's lawyers provide labour law services to clients in different sectors of the economy: energy and mining, transportation and pharmaceuticals, retail and manufacturing. The firm's lawyers are highly knowledgeable about the legal specifics of relations with different categories of employees in particular industries.

## AUTHORS



**Yuliya Chumachenko** is a partner at AEQUITAS and head of its labour and employment practice. She is highly experienced in the sphere of labour, civil, contractual,

antitrust, pharmaceutical and investment legislation. Ms Chumachenko has been advising clients for more than 30 years and is among the best lawyers of Kazakhstan in the labour law sphere. She is also an arbitrator for the International Arbitration Court of the Juridical Centre "IUS" and Atameken Arbitration Center. Ms Chumachenko actively co-operates with international clients while acting through *Ius Laboris*, an alliance of legal advisers, and has authored more than 100 publications on various issues of law for local and international sources.



**Alexandr Chumachenko** is a senior associate who specialises in the sphere of corporate, labour, contractual and pharmaceutical legislation. He has been advising clients for

more than ten years on different labour law issues, including hire for work and termination of labour relations, non-compete agreements, remote working, including in the context of introducing the state of emergency in the country, foreign labour engagement and migration legislation, personal data protection issues and others. Alexandr is a respondent for the World Bank's "Doing Business" and "Employing Workers" monitoring programmes. He has also authored more than 50 publications on the issues of labour and pharmaceutical legislation.



**Anton Alexeyev** specialises in labour, administrative, civil procedure and corporate legislation. He has been working in the sphere of labour relations for more than nine years, four of

which he served as a state labour inspector. Anton advises local and international clients on different labour law issues, including structuring of labour relations, and searches for optimal decisions in cases of troublesome dismissal, applying the methods of pre-trial and extrajudicial settlement of disputes. His membership of KazBar, the Kazakhstan Bar Association, allows him to represent clients in judicial proceedings, and he has already successfully settled about 25 disputes.

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## AEQUITAS

47 Abai ave., office 2  
050000 Almaty  
Republic of Kazakhstan

Tel: +7 727 3 968 968  
Email: [aequitas@aequitas.kz](mailto:aequitas@aequitas.kz)  
Web: [www.aequitas.kz](http://www.aequitas.kz)

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— LAW FIRM —



## Trends and Developments

### **Contributed by:**

*Yuliya Chumachenko, Alexandr Chumachenko and  
Anton Alexeyev*

**AEQUITAS** see p.27

### **Entry to Kazakhstan**

When crossing the state border of Kazakhstan, all travellers arriving must submit a certificate with a negative PCR test result for COVID-19 that is no more than three days old (children under the age of five are exempted from this requirement, provided that the persons accompanying them have certificates).

All travellers (except for residents of the Republic of Kazakhstan and persons who have a permanent residence permit in the territory of the Republic of Kazakhstan and have been given the full series of vaccinations against COVID-19 in Kazakhstan, providing the documentary confirmation) must fill in a questionnaire and pass temperature monitoring.

Persons arriving in Kazakhstan with a normal body temperature and providing a negative PCR test result for COVID-19 or a document confirming vaccination against COVID-19 in Kazakhstan are given an explanation of the potential symptoms of COVID-19, which should be followed by a corresponding acknowledgement document, after which they may resume travelling to the point of destination. Those who arrive in Kazakhstan with an elevated body temperature, regardless of the presence of a PCR test or a document on vaccination against COVID-19, are subject to isolation in a contagious in-patient facility.

Starting from 1 November 2020, Kazakhstan resumed issuing visas and other permitting documents for foreign nationals' stay in Kazakhstan. The unilateral visa-free regime for the citizens of 57 countries was suspended (except for the EAEU countries and other countries with visa-

free entry under international agreements) until 31 December 2021.

Visas are issued abroad by the Kazakhstan foreign embassies and consulates, while in the Kazakhstan territory visas may be issued by the Department of the Consular Service of the Ministry of Foreign Affairs and the Migration Police Administration of the Ministry of Internal Affairs of the Republic of Kazakhstan. In cases where there is a duly executed invitation from a Kazakhstan party, it is possible to obtain a visa at a Kazakhstan airport. Since 2020, it has been possible to obtain single-entry electronic tourist, business and health improvement visas on the visa and migration portal of the Kazakhstan e-Government website ([www.vmp.gov.kz](http://www.vmp.gov.kz)); however, this option is only available to the citizens of 109 countries (People's Democratic Republic of Algeria, Republic of Angola, Principality of Andorra, Commonwealth of the Bahamas, Bosnia and Herzegovina, Kingdom of Cambodia, Republic of Cuba, Arab Republic of Egypt, Grenada, Republic of Guinea, Islamic Republic of Iran, Jamaica, Lebanese Republic, Republic of Maldives, Montenegro, Republic of Seychelles, Republic of South Africa, United Republic of Tanzania, Turkmenistan, Bolivarian Republic of Venezuela, etc).

Foreigners arriving in Kazakhstan under a visa are automatically registered when crossing the state border via the "Berkut" Unified Information System (Berkut UIS) visa and migration portal at the address specified by the host party when executing the invitation.

The host party (hotels, hostels, owners of apartments rented by foreigners, medical and preventive treatment facilities, educational organisations, employers and other legal entities and individuals) must inform the internal affairs authority about the non-residents staying with them within three business days of their arrival. The notification procedure is automated and implemented via Berkut UIS.

## Ashyq Service

In spring 2021, Kazakhstan launched the Ashyq project, which involves the use of a special mobile application for access to business facilities (cinemas, theatres, restaurants, bowling alleys, fitness clubs, etc) by all entities located in the territory of Kazakhstan. The list of such facilities includes the airports of Nur-Sultan (from 12 May 2021) and Almaty (from 21 May 2021). Organisations not included in the list of socially important persons whose activities must integrate the use of Ashyq may voluntarily become a service participant, provided that all employees of such organisation have been vaccinated against COVID-19.

The application checks for data on COVID-19 and PCR testing and returns a risk rating, which may be either red (full movement restriction: strict self-isolation regime), yellow (partial movement restriction: user is identified in the PCR database as a contact person), blue (no movement restrictions, except for the places where PCR analysis is mandatory, for example, at the airport) or green (there are no movement restrictions and this user is identified in the database as having taken the PCR test with a negative result for COVID-19) statuses.

Foreign citizens must download the application and register. When entering a destination such as an airport terminal, it is necessary to scan a QR code and show it to a security officer. If a person does not use a smartphone and does

not have the application, then he or she needs to show his or her passport to the security officer in order to check the status in the system. Visitors with “yellow” or “red” statuses will not be allowed to enter the terminal building. People can check their status in advance by using a neutral QR code on the website [www.alaport.com](http://www.alaport.com).

## Vaccination

Vaccination in Kazakhstan is generally voluntary and fee-paid. Nevertheless, in certain cases expressly stipulated by legislation, vaccination is mandatory (eg, according to epidemiological indications against vernal encephalitis, viral hepatitis A, flu and some other infectious diseases). In February 2021, Kazakhstan launched its vaccination programme against COVID-19. At time of writing, this virus has not been included in the list of diseases against which vaccination is mandatory. Furthermore, the Code on Health and Healthcare System of Kazakhstan confirms the right of citizens to give informed consent or refuse treatment and other medical interventions, including preventive vaccinations. At the same time, in connection with the detection of the mutation of COVID-19 specific to the Delta variant (“Indian”) in Kazakhstan’s capital (Nur-Sultan), the Interdepartmental Commission on Preventing the Spread of COVID-19 recommended the Chief State Sanitary Doctor of Kazakhstan (who is specifically authorised to establish restrictive quarantine measures and require mandatory population vaccination according to legislation) on 22 June 2021 to take additional measures on the quarantine regime, including introducing restrictions on the work of employees active in the service sector, industrial enterprises and other organised groups (more than 20 people) without vaccination against COVID-19 (except for persons who have permanent medical contraindications and those who have already been exposed to the virus), and if such employees refuse to be vacci-

nated – introducing a requirement for mandatory weekly PCR tests. This is to say that, starting from the moment the Chief State Sanitary Doctor of Kazakhstan adopts a relevant regulatory legal act, the principle of voluntary vaccination may change for certain employees and employers. Admission by an employer of the above category of employees to work without a vaccination passport or a negative result of a PCR test undergone by an employee each seven days will be classed as a violation of the requirements of the epidemiological legislation and entail administrative liability applied to both the employee and the employer.

Accordingly, strictly from the legal point of view, employers may not oblige their employees to get a vaccination (even in order to ensure safety of employees or due to the requirements of the Chief State Sanitary Doctor of Kazakhstan), or suspend them from work in case of refusal to get vaccination, or refuse to pay for temporary incapacity to employees who refused to get a vaccination and contracted COVID-19. The only exception is a requirement for employees working in big groups and in the services sector who have refused vaccination (unless vaccination is contraindicated for an employee for medical reasons) to regularly undergo PCR testing. It is worth mentioning that, as of the time of writing, vaccination against COVID-19 in Kazakhstan is free of charge for all population groups, while PCR tests are conducted on the state's account only with respect to those who contracted COVID-19. Accordingly, we do not exclude that employers will have to ensure PCR testing for their employees in order to support their business processes and avoid downtime.

### **Remote Working**

The second year of the pandemic and the current epidemiological situation in the country resulted in the introduction of a number of statutory restrictions, including on the physical

presence of employees in different workplaces, including offices.

Specifically, admission to office work now depends on the vaccination of relevant employees, the acquisition of immune defence against COVID-19 as a result of suffering the illness, and whether it is possible to perform the labour duties in a remote working regime.

The status of a person who has been vaccinated is confirmed by a vaccination passport. Please note that, strictly from the legal point of view, an employer may get access to information about an employee's vaccination status only subject to his or her consent.

The fact of having contracted COVID-19 may be confirmed by an employee by submitting to his or her employer a doctor's medical opinion (or any other similar document of the statutorily established form) and/or a medical sick leave certificate containing an indication that he or she has suffered COVID-19 illness. If an employee was actually exposed to COVID-19 in the past but failed to obtain a medical opinion or a medical sick leave certificate for any reason in accordance with the established procedure, the fact of having contracted COVID-19 may be confirmed by a document obtained by the employee based on the results of the tests from a healthcare organisation (laboratory) that conducted those tests.

As regards the issue of determining the set of employees whose labour duties cannot be performed remotely, this issue is referred to the competence of the employer, and the employer may itself determine the types of work which cannot be performed remotely, by approving the list of such work in an employer's act (eg, order).

At the same time, there is a requirement to transfer a certain percentage of employees to remote

working, depending on the category of the epidemiological risk zone (red, yellow, green). This requirement does not apply to: (1) employees who have already been exposed to COVID-19, (2) employees who have been vaccinated against COVID-19, and (3) employees whose work cannot be performed in a remote working regime. Other employees who do not fall under the above categories may be admitted to work in the office premises subject to compliance with the following ratio: no more than 20% for the red zone, no more than 50% for the yellow zone, and no more than 70% for the green zone.

As regards the application of a remote working regime to employees, please bear in mind that this requires a relevant documented execution of such a transfer. However, since the epidemiological situation constantly changes, as do the requirements on the percentage ratio between office and remote employees, it is recommended to introduce a set of documents stipulating periodic transfers of employees to remote work and back. The simplest option (to the extent possible from the viewpoint of the current legislation) for an employer is to adopt remote working regulations setting out all key conditions of performing remote work by the employees, and to introduce provisions into the employment contracts on transfer to remote working for a certain period with a reference to the relevant employer's instructions in the employer's discretion, if necessary. This is to say that a supplementary agreement to an employment contract is entered into only once, and the employer will issue orders, if necessary, with respect to the entire company (all employees) or with respect to separate structural subdivisions of the company (part of employees) where the employer will express its demand on transfer to remote working and indicate any specific period. The supplementary agreement to the employment contract will also be used by the parties to agree the work time accounting procedure and the amount of

compensation to an employee in case of performing his or her work remotely, and will contain a reference to the remote working regulations with respect to other conditions. The employees must be made familiar with/notified of the regulations and orders issued from time to time.

It is worth additionally mentioning that Kazakhstan is considering a draft law to change the Labour Code in the sphere of remote work, which provides a detailed description of the legal regulation of such labour regime and introduction of the new forms of remote working, such as mixed work and temporary remote work, including a prohibition forbidding an employer from requiring a remote employee to be available beyond the working hours. These changes are expected to be adopted at the end of 2021.

## **Medical Personal Data of Employees**

In 2020, Kazakhstan amended the healthcare legislation in general and, specifically, in the sphere of medical personal data, including in connection with the employer's collection of medical information about an employee relating to COVID-19 (results of a PCR test and/or COVID-19 antigen test, tracing of the employee's contacts, information about vaccination, COVID-19 treatment, etc). Furthermore, this is the first time Kazakhstan appointed an authorised agency to control the issues of personal data protection (Ministry of Digital Development, Innovations and Aerospace Industry of Kazakhstan), in which connection we expect an increase in regulatory activities with respect to companies' compliance with requirements in this sphere, including the issues of localisation of databases containing personal data, cross-border transfer of personal data, electronic methods to obtain the subject's consent to collection and processing of his or her personal data, timely and legally correct responses to requests/claims from the personal data subjects, etc.

Please note that Kazakhstan is considering a draft law on additional changes in the sphere of personal data, which would provide a detailed description of the legal regulation concerning the content and form of consent, and introduce a special state service to control access to personal data (service ensuring information interaction between owners and/or operators, subjects and authorised agency, including obtainment (or revocation) of a consent from the subject to the collection and processing of personal data and transfer thereof to third parties). For the purpose of this service's functioning, it is contemplated to impose an obligation on companies to ensure the integration of their own information systems involved in the collecting and processing of personal data with the said service within one year of the date of adopting a relevant law, as an obligation to provide information to the subject concerning the presence of the subject's personal data with the owner and/or operator by way of integration or introduction of relevant information into the service. These changes are expected to be adopted at the end of 2021.

### **National Job Classifier**

In 2018, Kazakhstan introduced the National Job Classifier, which must be applied by employers according to the provisions of the Labour Code of Kazakhstan when determining the qualification requirements for the positions of employees (educational level, work experience at a relevant organisation or in a specialism, or other special knowledge). When each company forms its list of positions and executes labour documents with employees, it must use the names of positions in accordance with this Classifier, and in the case of absence from the Classifier of a name for a position which an employer wishes to introduce and apply in its organisation, the Ministry of Labour and Social Protection of Population of Kazakhstan normally recommends developing model qualification characteristics corresponding to such position and sending them for approval to

the authorised agency until subsequent inclusion in the classification of job positions and occupations adopted in Kazakhstan. It is worth pointing out that, in practice, employers, especially international companies, often use the names of positions adopted in the staffing schedule of a parent company or within a group of companies, which do not coincide with professions and names of positions included in the Classifier. This started adversely affecting employers starting from September 2020, when a new obligation was introduced to enter data concerning the employment contracts of employees into the Unified Accounting System of Employment Contracts, and one of the mandatory fields to be filled out is the name of the employee's position according to the Classifier. The HR service employees often formally fill out this field without thorough analysis of the functions stipulated by the Classifier and without comparing such functions with the employee's functions. Such approach may entail a risk of disputes with an employee concerning the functions performed by the employee if the position selected according to the Classifier does not correspond (according to its functions) to the actual labour duties of the employee. To avoid this problem, it is recommended to bring the names of positions and the content of the work performed in line with the Classifier. If the names of positions and qualification requirements have not been brought in line with the Classifier, before specifying the name of the position of an employee in the system it is recommended to perform the tedious and time-consuming preparatory work allowing a position to be selected from the Classifier which will correspond the most with the job functions of the employee.

### **Internal Labour Audit**

Despite the fact that the pandemic further changes social organisation in general and the work processes of certain companies, it is still necessary to pay attention (and, perhaps, much

more than earlier) to ensuring that the work of internal control departments is not interrupted. As part of the management of compliance risks, it is important to establish an efficient system to identify the existing defects and violations in the activities of a company and its employees. Normally, the source of such information is an inspection conducted by a compliance subdivision or an internal audit. Despite the fact that until 1 January 2023 there is a moratorium in Kazakhstan on state inspections and preventive control and supervision with on-site visits to small businesses (to check the category of a business entity, please visit [www.elicense.kz/](http://www.elicense.kz/), section “Service of individuals and legal entities”), improving the HR component of business processes is an undeniable business advantage of any organisation, which eventually strengthens the discipline and loyalty of employees and forms the brand of a responsible employer, and significantly mitigates the risk of disputes with employees and a defeat in court. Furthermore, the improved labour processes and docu-

ments may be registered at a public level and bring the deserved recognition to a company. Thus, according to the Labour Code, one of the instruments for recognising that an employer’s activities comply with requirements of the labour legislation is a declaration conducted by a local labour inspection authority together with regional unions and associations of employers and territorial associations of trade unions upon an application from an employer. The assessment is conducted by comparing the criteria (indices) based on which an employer evaluates its own activities with the requirements of the labour legislation. Information on the declaration is entered by an employer into the information system on occupational health and safety. Employers whose activities are recognised as complying with requirements of the labour legislation of Kazakhstan are served certificates of trust for a term of three years, which releases a company from state-scheduled on-site inspections for this term.



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firms. AEQUITAS advises companies on their day-to-day matters and helps resolve the most complex and intricate issues not expressly regulated by the Kazakhstan labour legislation. The firm's lawyers provide labour law services to clients in different sectors of the economy: energy and mining, transportation and pharmaceuticals, retail and manufacturing. The firm's lawyers are highly knowledgeable about the legal specifics of relations with different categories of employees in particular industries.

## AUTHORS



**Yuliya Chumachenko** is a partner at AEQUITAS and head of its labour and employment practice. She is highly experienced in the sphere of labour, civil, contractual,

antitrust, pharmaceutical and investment legislation. Ms Chumachenko has been advising clients for more than 30 years and is among the best lawyers of Kazakhstan in the labour law sphere. She is also an arbitrator for the International Arbitration Court of the Juridical Centre "IUS" and Atameken Arbitration Center. Ms Chumachenko actively co-operates with international clients while acting through *Ius Laboris*, an alliance of legal advisers, and has authored more than 100 publications on various issues of law for local and international sources.



**Alexandr Chumachenko** is a senior associate who specialises in the sphere of corporate, labour, contractual and pharmaceutical legislation. He has been advising clients for

more than ten years on different labour law issues, including hire for work and termination of labour relations, non-compete agreements, remote working, including in the context of introducing the state of emergency in the country, foreign labour engagement and migration legislation, personal data protection issues and others. Alexandr is a respondent for the World Bank's "Doing Business" and "Employing Workers" monitoring programmes. He has also authored more than 50 publications on the issues of labour and pharmaceutical legislation.



**Anton Alexeyev** specialises in labour, administrative, civil procedure and corporate legislation. He has been working in the sphere of labour relations for more than nine years, four of

which he served as a state labour inspector. Anton advises local and international clients on different labour law issues, including structuring of labour relations, and searches for optimal decisions in cases of troublesome dismissal, applying the methods of pre-trial and extrajudicial settlement of disputes. His membership of KazBar, the Kazakhstan Bar Association, allows him to represent clients in judicial proceedings, and he has already successfully settled about 25 disputes.

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## AEQUITAS

47 Abai ave., office 2,  
050000 Almaty,  
Republic of Kazakhstan

Tel: +7 727 3 968 968  
Email: [aequitas@aequitas.kz](mailto:aequitas@aequitas.kz)  
Web: [www.aequitas.kz](http://www.aequitas.kz)

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