

NEW KEY POINTS IN LABOR DISPUTES:

IMPORTANT BASICS ABOUT A NEW RESOLUTION OF THE SUPREME COURT

IMPORTANT!

The labor legislation amendments and accumulated judicial practice experience have demonstrated the necessity to update normative clarifications. In light of this, the Supreme Court of the Republic of Kazakhstan (Supreme Court) adopted a new [Normative Resolution No. 1 "On Certain Issues of Applying Legislation by Courts When Resolving Labor Disputes"](#) dated 28 November 2024, which entered into legal force on 13 December 2024 and superseded the previous Resolution No. 9 dated 6 October 2017.

This regulatory document is one of component parts of the current Kazakhstan legislation and, accordingly, it is universally binding and is aimed at elimination of gaps and ensuring of uniform application of rules of the labor legislation.

Please see below the novelties and changes, which we deem most important for business.

■ Conciliation Board: Additional Clarifications

The Supreme Court added clarifications regarding the formation and operating procedure for a Conciliation Board and expressly specified that relevant rules are of imperative nature.

This additional information suggests an idea that the courts will conduct more thorough supervision over legitimacy of Conciliation Boards. However, this gives rise the following question: Is there any sense in such decision if the conclusions of such Conciliation Boards are still not binding upon courts and individual labor disputes must be considered on the merits within the claimant's claims?

■ Unified Accounting System of Employment Contracts: Focus on Binding Nature

The Supreme Court emphasized the importance of fulfillment of legislation requirements on introduction of data into the Unified Accounting System of Employment Contracts. According to Article 23.2.27 of the Labor Code of the Republic of Kazakhstan, an employer must introduce information on entering into and termination of employment contracts with employees in accordance with the established procedure.

When considering a dispute relating to an appeal against an order on termination or cancellation of an employment contract, the court must take account of whether an employer performed this obligation or not. Failure to comply with this requirement may affect the evaluation of the case circumstances and substantiation of the employer's decisions.

■ Reinstatement at Work: Scope of Stated Claims

The Supreme Court clarified that, when resolving on reinstatement of an employee at work because of legislation violations committed when terminating an employment contract, the court may recognize as illegal and revoke a respective employer's act even if a claimant has not filed such claim.

This will not be treated as a violation of the rule on the case consideration within the claims stated by a claimant (part 2 of Article 225 of the Civil Procedure Code of the Republic of Kazakhstan), because reinstatement at work is impossible without recognition of an employment contract termination act as illegal. Thus, revocation of the employer's act is a condition required to ensure reinstatement of an employee at work.

■ **No Reinstatement at Work is Allowed if the Employment Contract Term Expired**

The Supreme Court added an important clarification regarding reinstatement of an employee whose employment contract entered into for a definite term has been illegally terminated or cancelled. From now on, reinstatement at work is allowed only within the effective term of an employment contract. If the employment contract term has expired by the moment of considering a dispute, the employee will not be reinstated at work.

However, if so resolved by a Conciliation Board or court, the employee may be paid salary and other amounts due for the entire period from the moment of illegal termination of the employment contract until the date of termination, but for no more than 6 months.

■ **Medical Examination: Place Matters**

The Supreme Court clarified that, when cancelling an employment contract on the employer's initiative (Article 52.1.9 of the Labor Code of the Republic of Kazakhstan), the fact that an employee was in the condition of alcohol, narcotic, psychotropic or other inhalant intoxication (or their analogues) must be confirmed by a medical opinion issued only by a state medical organization.

This clarification emphasizes the importance of strict compliance with the established procedure, since the results of examinations conducted in private or other institutions have no legal force and may be invalidated. Employers must carefully check that such examination takes place at a state organization in order to avoid the risks of challenging the results in the course of labor disputes and legal implications.

■ **Rotation-Based Work: No Dismissal for Drinking Alcohol during the Rest Period between Shifts**

The Supreme Court clarified that, when challenging the fact that an employee was in the condition of alcohol, narcotic, psychotropic or other inhalant intoxication (their analogues) during the rest period between shifts in case of rotation-based work, courts must consider the specifics of applying the rotation-based work. According to Article 135.4 of the Labor Code of the Republic of Kazakhstan, rotation includes both the time of work at a facility and the time of rest between shifts, which is not the working hours but one of the types of rest.

The Supreme Court also specified that establishment of the fact of intoxication during the rest period between shifts does not serve as a sufficient ground for cancellation of an employment contract on the employer's initiative, including based on Articles 52.1.9 and 52.1.10 of the Labor Code, because the rest period between shifts is not referred to working hours.

■ **Employee Notification: Changes in Approach to the Notice Term**

The Supreme Court set out in detail the procedure for serving a notice of termination of an employment contract entered into for a definite term of at least one year. From now on, a notice must be served by one of the parties exactly on the last day (shift) of work, which differs from the previous position that a notice could have been served not later than the last day of work.

We believe that changes in the position of the Supreme Court may give rise to additional difficulties for HR specialists, because there often occur situations in practice where employees evade the receipt of notices, and it does not always seem possible to serve them on the last day of work.

■ **When a Trade Union is Silent: Employer's Right to Impose Sanctions**

The Supreme Court specified that, in case of challenging an employer's act on imposition of a disciplinary sanction or cancellation of an employment contract on the employer's initiative with a member of an elective trade union body, courts need to check as to compliance with the procedure and terms established by a collective bargaining agreement for submission of a motivated opinion of the trade union. If the employer applied for the motivated opinion to a trade union body in time, but such body evades or refuses to submit its opinion, upon expiration of the established period for

submission the employer is able to issue an act on imposition of a disciplinary sanction or cancellation of an employment contract.

■ **Transfer to Another Job: Additional Clarifications**

The Supreme Court clarified the procedure for transferring an employee to another job, specifying that the procedure must be conducted in accordance with Article 33 of the Labor Code of the Republic of Kazakhstan. A notice of transfer must be submitted by one of the parties to an employment contract and considered by the other party within 5 business days of the date of submission. The receiving party must inform of the decision made.

At the same time, the Supreme Court mentioned that, in case of transfer to another locality, a different notice term must be applied – an employee must be notified not later than 1 month in advance. Furthermore, an employer must reimburse the relocation costs. It is important that the employee's refusal to be transferred to another locality may not serve as a ground for cancellation of the employment contract in case of a failure to fulfil requirements of the Labor Code of the Republic of Kazakhstan.

Should you have any additional questions in connection with this Legal Update, we would be happy to provide more detailed information.

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