

10 QUESTIONS TO A LAWYER

ABOUT PLATFORM EMPLOYMENT IN KAZAKHSTAN

As digital platforms (such as Wolt, Glovo, Yandex Go, Uber, Upwork, and others) have been growing in popularity in Kazakhstan, especially among young people and freelancers¹ who appreciate the opportunity of determining a convenient schedule themselves and providing services at their own discretion, and deem it possible to combine this option of making money with the primary job, a need in legal regulation in this sphere became obvious.

In pursuance of the mandate of the Head of the State announced in the Address to the People of Kazakhstan on 1 September 2023, the Ministry of Labor and Social Protection of Population together with the governmental agencies concerned elaborated the mechanisms allowing to protect labor and social rights of citizens working in the platform employment sphere, which were reflected in a number of Kazakhstan regulatory legal acts.

Below is analysis of the key legal aspects of platform employment worth paying attention.

1. What is platform employment?

According to the Social Code², platform employment is a type of activities on provision of services or performance of work using the Internet platforms and/or platform employment mobile applications³.

In turn, an Internet platform is an Internet resource intended for interaction between an operator of an Internet platform, customer and contractor providing services and performing work⁴. The Kazakhstan legislation also defines a platform employment mobile application as a software product installed and launched on a subscriber's cellular communications device, which grants access to the services provided and work performed by way of an Internet platform⁵.

In simple words, platform employment is a form of entrepreneurial activities allowing to get a wide spectrum of services from food delivery and taxi to services in the sphere of IT, whereby contractors (so-called platform or independent workers) fulfil the instructions of customers (clients) via digital platforms (mobile applications and/or Internet resources).

¹ Understood as a *freelancer* in this article is an individual carrying out activities on provision of services and/or performance of work on an individual basis, at his/her sole risk and without entering into a termless employment contract with a specific employer, as a rule, under civil contracts (e.g. contract agreement or fee-paid services agreement). This term comes from the English "*freelancer*" who is an independent worker not bound to any specific hirer.

² Code No. 224-VII of the Republic of Kazakhstan "Social Code of the Republic of Kazakhstan" dated 20 April 2023, amended as of 1 January 2025 (https://online.zakon.kz/Document/?doc_id=36492598).

³ Article 102.1 of the Social Code.

⁴ Article 1.1.81 of the Social Code.

⁵ Article 1.1.126 of the Social Code.

2. Who are the parties to legal relations in case of platform employment?

The parties to platform employment are⁶:

- **Contractor** – individual, individual entrepreneur or legal entity registered on an Internet platform and providing services and performing work for customers using the Internet platforms under a public agreement.
- **Internet platform operator** – individual entrepreneur or legal entity rendering services (using Internet platforms) on provision of technical, organizational (including the services with engagement of third parties for the performance of work or provision of services), information and other opportunities using information technologies and systems allowing to establish contacts and enter into transactions on provision of services and performance of work between contractors and customers registered on the Internet platforms.
- **Customer** – individual or legal entity registered on an Internet platform and placing an order there for the provision of services or performance of work.

3. How is platform employment regulated in Kazakhstan?

The conceptual framework of platform employment, its participants and their interaction procedure are secured in the Social Code (Article 102).

At the same time, according to provisions of the Social Code, relations between an operator, customer and contractor relate to civil relations and are regulated by the Civil Code⁷.

Furthermore, if a legal entity (or individual entrepreneur) acts as a contractor and engages individuals to provide services and perform work using the Internet platforms and/or platform employment mobile applications, legislation orders to qualify relations with such persons as labor relations and regulate them in accordance with the Labor Code⁸.

4. What is the legal status of a platform worker?

It follows from the rules of the Social Code that, from the moment an individual registers as a contractor on an Internet platform, he/she is recognized as an independent worker and provided with social guarantees via the Internet platform, because operators of Internet platforms are recognized as tax agents who have obligations to pay taxes and make social payments from the income of individual workers.

If being hired by a company registered on an Internet platform as a contractor, an employment contract must be entered into between such worker and contractor company, and the worker will receive a full set of guarantees (paid leave, medical, pension and social contributions, protection against dismissal without a valid reason, and other social support measures) stipulated by the labor legislation.

Accordingly, the so-called platform workers get the full social package in both cases, including the right to receive pension payments, social payments from the state social insurance fund, and

⁶ Article 102.2 of the Social Code.

⁷ Civil Code of the Republic of Kazakhstan (General Part) dated 27 December 1994, amended as of 1 September 2024 (https://online.zakon.kz/Document/?doc_id=1006061), and Civil Code No. 409-I of the Republic of Kazakhstan (Special Part) dated 1 July 1999, amended as of 13 March 2025 (https://online.zakon.kz/Document/?doc_id=1013880).

⁸ Labor Code No. 414-V of the Republic of Kazakhstan dated 23 November 2015, amended as of 1 January 2025 (https://online.zakon.kz/Document/?doc_id=38910832).

will be able to use the services of medical institutions under the guaranteed volume of free medical aid (GVFMA).

5. What is the effective period of agreements entered into between a contractor and an Internet platform operator?

The term of legal relations between a contractor and an Internet platform operator is determined by the conditions of a specific agreement entered into between the parties.

It is worth mentioning that the term of an employment contract with an employee of a contractor company is established in accordance with the Labor Code. However, an additional guarantee on extension of the employment contract term is stipulated for this category of employees.

Thus, according to Article 146-1.2 of the Labor Code, an employment contract between an employee and an individual entrepreneur or a legal entity carrying out activities using the Internet platforms and/or platform employment mobile applications, may be entered into for a definite term without applying the restriction stipulated by Article 30.1.2 of the Labor Code. The said sub-clause also contains the conditions, which may be qualified as a restriction:

- 1) entering into an employment contract with the term of at least one year;
- 2) extension of an employment contract for no more than two times, after which, in case of further labor relations, the employment contract must be considered as to have been entered into for an indefinite term; and
- 3) extension of an employment contract is allowed only for an indefinite term or definite term of at least one year.

Such wording of the rule creates a space for varying interpretations of what specific restriction was meant by the law-maker, since Article 30.2 of the Labor Code speaks about a "restriction" in the singular, although, the rule actually lists several conditions, which may be considered as such. This gives rise to legal uncertainty and allows for different approaches to its application, which may serve as a reason for disputes regarding the allowed term of an employment contract and number of its extensions for a platform worker.

Similar situation has formed with extension of the employment contract term in case of considering small-scale business entities. In this case, three principal positions have formed with respect to this issue:

- 1) employment contract may be entered into for a term of less than one year, but it may be extended no more than two times;
- 2) employment contract must be entered into for a term of at least one year; however, its term may be extended an unlimited number of times; and
- 3) employment contract may be entered into for any term and extended an unlimited number of times (for any term), regardless of its initial term.

Only time and law-application practice will show which opinion will prevail in case of platform employment.

6. What are the key differences between labor relations with a platform worker and traditional labor relations?

In addition to specifics of regulation of the employment contract term mentioned in our answer to the previous question, the Labor Code (Article 146-1) provides for the possibility to establish other duration of daily work (work shift) and work time accounting procedure, labor remuneration system and payment conditions for the employees carrying out their labor activities applying the Internet

platforms and/or platform employment mobile applications. These issues must be regulated in detail by the employer's acts, collective bargaining agreement or employment contract subject to imperative (binding upon all employees) rules of the labor legislation.

7. What are the specifics of taxation of persons participating in platform employment?

In 2022, a special tax regime (STR) with the use of a special mobile application⁹ was introduced into the Tax Code¹⁰, which provides for a simplified taxation system. The STR perfectly suits for platform workers. Since 2024, STR became available for courier delivery services (except for postal matters)¹¹.

It is also worth mentioning that Kazakhstan launched the pilot project "Platform employment" in 2023 in order to simplify the performance of tax obligations by persons providing services using the Internet platforms, according to which taxes are withheld and paid for the contractors registered on the Internet platforms who have the status of an individual entrepreneur (IE) applying the STR by the Internet platforms (their operators). When providing personal services, the most profitable is the use of the e-Salyq Business mobile application by the Internet platform operators, which issues receipts, calculates taxes and payments itself, and no declaration is submitted.

A platform operator acting as a tax agent withholds mandatory contributions from the contractor's fees and transfers them, including:

- 1) mandatory pension contributions (MPC) – 10% of income or 1% in case of STR (selected by contractor);
- 2) social contributions – at the rate of 1% in case of STR with income limit up to 7 minimum salaries (MS);
- 3) mandatory social medical insurance contributions (MSMIC) – at the rate of 1% in case of STR or applying the rates established by the legislation on mandatory social medical insurance; and
- 4) individual income tax (IIT) – at the preferential rate of 1% according to STR instead of standard 10%.

Thus, when selecting all preferential rates, the total current tax burden is only 4% of income, which makes platform employment available and flexible to the maximum extent possible.

It is worth separately mentioning that obligation to pay mandatory pension contributions of an employer (MPCE) is also imposed on a platform operator, but will enter into force starting 1 January 2026¹².

⁹ Articles 686-1, 686-2 and 686-3 of the Tax Code.

¹⁰ Code No. 120-VI of the Republic of Kazakhstan "On Taxes and Other Mandatory Payments to the Budget (Tax Code)" dated 25 December 2017, amended as of 1 January 2025 (https://online.zakon.kz/Document/?doc_id=36148637).

¹¹ Law № 213-VII of the Republic of Kazakhstan "On Introduction of Amendments into the Code of the Republic of Kazakhstan on Taxes and Other Mandatory Payments to the Budget (Tax Code) and the Law of the Republic of Kazakhstan on Putting into Effect the Code of the Republic of Kazakhstan on Taxes and Other Mandatory Payments to the Budget (Tax Code)" dated 20 March 2023 (https://online.zakon.kz/Document/?doc_id=33914914&pos=1;-16#pos=1;-16).

¹² Decree No. 945 of the Government of the Republic of Kazakhstan dated 8 November 2024 (<https://adilet.zan.kz/rus/docs/P2400000945#z38>).

For your information, according to a new Tax Code, which is currently considered by the Mazhilis of the Kazakhstan Parliament, it is contemplated to introduce an updated model of STR for the small-scale and medium-scale business. According to the Minister of National Economy Serik Zhumagarin, it will be called the STR based on simplified declaration.

In case of a contractor company registered on an Internet platform, such company will similarly perform functions of a tax agent with respect to its employees, including platform workers, and will make all required withholdings, deductions, contributions, and will pay taxes in accordance with the established general procedure.

8. What are the parties' risks in connection with the platform employment relations?

Although platform employment provides for flexibility and independence, it poses a number of risks for both contractors and platforms.

For contractors, this is primarily lack of stable employment and income. Unlike an on-staff employee, a contractor does not have a guaranteed volume of orders and fixed salary – income is directly dependent upon the number and cost of the fulfilled orders. They have no paid leave, sick leave and other guarantees stipulated by the Labor Code for employees under an employment contract. Until recent time, contractors who had had no employment contract and had not been registered in the mandatory social insurance system were actually excluded from the social support system. In the absence of social contributions, they had no right to get allowances in connection with temporary work incapacity, pregnancy and childbirth, unemployment, and other social risks. Introduction of a special tax regime and integration of platform employment into the social security mechanism allowed to partially eliminate this gap. The current situation is much better due to the novelties of the Social Code (contractors are included in the social security system via payment of contributions to the Internet platform operators). Furthermore, contractors bear the risk of accidents and occupational diseases on their own (in case of absence of an employment contract, an Internet platform operator is not obligated to take out insurance against accidents at work).

For a platform operator, one of potential risks may be liability for quality of the contractors' services. Although, from the formal point of view, a contractor provides services/performs work directly to customers, they may also file claims against the platform as the service organizer. If contractors violate consumer rights or cause harm (loss of a parcel, car accident involving a taxi, etc.), an Internet platform operator may encounter claims for compensation for damages. Reputational risks are high as well: cases of gross violation of conditions by contractors (failure to observe delivery deadlines, inappropriate customer communications, etc.) affect the platform's reputation, which has indirect impact on its business.

9. What legal implications may originate in case of violating the conditions of work on a platform?

When any party fails to comply with the conditions of work on a platform, this gives rise to consequences stipulated by legislation and an agreement entered into between them (platform's public offer). Since their relations are of civil nature, sanctions and their imposition procedure are determined by an agreement and general rules of civil law:

- **For a contractor:** violation of the platform's rules (e.g. refusal to fulfil accepted orders without a valid reason stipulated by the platform, systematic failures to comply with the platform's standards, facts of deceiving customers, disclosure of confidential information of customers, etc.) normally entails unilateral cancellation of an agreement by the platform. In simple words, such contractor may be disconnected (blocked) from the platform. As a rule, such opportunity is expressly stipulated by a public agreement, to which the contractor agrees having registered on the platform and having started working. For example, many food delivery and taxi services

include a provision in their agreements that, in case of a certain number of violations or low rating, the contractor's account may be deactivated. From the legal standpoint, this will be cancellation of a civil contract for a material violation of the agreement conditions. In this case, the contractor will lose its access to orders and income from the activities on the platform, which is equal to the loss of job; however, from the formal point of view, the concept of "dismissal" will not apply in this situation under the Labor Code, because there are no labor relations. Furthermore, a contractor may be brought to administrative or criminal liability if the contractor's actions fall under the set of elements of a violation stipulated by law. For example, violation of traffic rules when delivering, which led to an accident, or theft of someone's property may entail more severe consequences. In general, the key risks for a contractor are the loss of access to a platform and potential financial claims for compensation for the damages caused.

- **For a platform (operator):** platform will also be liable in case of violating its obligations and agreement conditions. If the platform violates the conditions of the offer in respect of a contractor, for example, allows for an unsubstantiated delay in payment of fees, unlawfully blocks an account or unilaterally changes material conditions of cooperation, a contractor may file a complaint or a claim through civil proceedings. Such contractor may claim in court for payment of the amounts due, restoration of access or compensation for losses caused by the agreement violation. Although such disputes rarely come to court, the Kazakhstan legislation provides contractors with every right to judicial protection.

The platform's liability for violating the personal data legislation is not less serious. Failure to ensure adequate level of protection of the customers' and contractor's personal data may entail administrative liability in the form of a fine, the amount of which depends on the wrongdoer category and qualifying features and varies from 60 to 2,000 monthly calculation indices (MCI¹³). In certain cases, the platform management may encounter liability up to criminal liability (e.g. if the data leakage or unlawful use caused material damages to rights and legitimate interests of persons).

10. What are the platform's obligations on protection of personal data of contractors and customers?

Digital platforms process significant volumes of personal data of users – contractors and customers. Such data include name, contact details, geolocation, payment details, and other information. The Law on Personal Data and Protection Thereof¹⁴ imposes a number of mandatory requirements intended to ensure confidentiality, legality and security of such data processing on the operators of Internet platforms.

First, collection and processing of personal data must be legal and commensurable. The platform may process only the data required to achieve the stated purposes. Processing for other purposes (not mentioned in a user agreement, public offer or confidentiality policy) is prohibited. When registering, a user provides an informed consent to processing of his/her personal data. An Internet platform operator must have internal documents regulating the data storage, access, anonymization and destruction procedure.

Second, the platform must ensure adequate level of data security. The received data must be stored on servers located in the territory of Kazakhstan, in accordance with the requirement on personal data localization¹⁵.

¹³ In 2025, 1 MCI is equal to KZT 3,932 or approximately USD 7.7.

¹⁴ Law No. 94-V of the Republic of Kazakhstan "On Personal Data and Protection Thereof" dated 21 May 2013, amended as of 7 January 2025 (https://online.zakon.kz/Document/?doc_id=31396226).

¹⁵ Article 12.2 of the Kazakhstan Law on Personal Data and Protection Thereof.

The platform must take the required organizational and technical measures to protect the data of contractors and customers. The Law on Personal Data and Protection Thereof requires to prevent from unauthorized access to personal data, timely detect the attempts of such access and minimize the consequences of potential leakages. For this purpose, a platform must have effective internal data protection policies, encryption systems, access control systems, and must appoint a person responsible for organizing personal data processing who will exercise internal control over compliance with requirements of the Law on Personal Data and Protection Thereof.

Finally, in case of an incident (leakage or violation of the data security regime), the platform must inform an authorized agency¹⁶ within one business day of the moment of detecting the personal data security breach, specifying the nature of the incident and contact details of the responsible person. Failure to comply with requirements of the Law on Personal Data and Protection Thereof entails administrative liability, including fines and platform suspension. Furthermore, the affected users will have the right to judicial protection and compensation for the damages caused.

Thus, the platform's compliance with the personal data protection requirements is not a formality, but an express legal obligation, violation of which may entail legal risks and shatter the user confidence.

Summary

Platform employment in Kazakhstan combines the elements of both labor and civil relations, which gives rise to additional law-application challenges. From the one hand, it ensures flexible and available forms of employment for thousands of citizens, especially in the sphere of courier, transport, and domestic services. From the other hand, it requires thorough legal approach to formalization of relations between platforms and contractors.

Legal regulation of platform employment is still dynamically developing and requires improvement, including in light of international experience and digital reality.

The key sector stability and growth factor must be not only formal compliance with legislation requirements, but also commitment to creation of transparent, fair and legally reliable cooperation models. Such approach contributes to confidence-building and ensures development of platform services in the interest of all parties.

¹⁶ Order No. 481/HK of the Acting Minister of Digital Development, Innovations and Aerospace Industry of the Republic of Kazakhstan dated 9 August 2024.