

Labor Law

Historical Overview

The Soviet system of social benefits was standard, relatively modest in terms of choices, but sufficient to satisfy basic human needs. The system of benefits was incorporated in the social system of the country. Only a handful of privileged state institutions provided additional benefits. The most frequently used practices included options for faster receipt of state housing and availability of better schools and kindergartens.

After the dissolution of the USSR, the government targeted its policy on creating a free market economy. Most of the previously available state-financed benefits became no longer available. Local companies that survived or emerged during transition have not in general been offering any additional benefits to their employees due to the lack of experience, knowledge of HR management, and funding. Only foreign companies new to the market set a precedent of providing extra benefits to their employees.

At the moment international companies are the leaders in HR management. Unfortunately, local companies limit themselves to legal requirements and provide very few, if any, additional benefits. Another category of companies are enterprises, which were privatized fully or partially by foreign investors. These companies in general have not altered old Soviet style management systems. In terms of employee benefits such companies are virtually identical to local institutions.

Legislation

The constitution of the Republic of Kazakhstan is the principal law, which regulates the work, conditions and rights of the citizens and residents.

Law On Labor was issued on December 10, 1999 and came into force on January 1, 2000. It regulates labor relations, contracts, leave, compensation, working hours and other issues.

Law On Employment was issued on December 30, 1998 and came into effect on January 1, 1999. It covers public employment and the means of social protection for those unemployed.

Law On Republican Budget for 2002 was issued on December 15, 2001 and came into force January 1, 2002. Among other indicators it fixes the monthly payment indicator and minimum wage, used in computations of taxes, allowances, compensations, and other legal benefits.

Law On Protection of Labor was issued on January 22, 1993 and came into force February 25, 1994. It regulates issues of security in the workplace to prevent accidents and reduce hazards on the sites of dangerous production facilities.

Law On Trade Unions was issued on April 9, 1993. It regulated activities of trade unions in Kazakhstan, rights and guarantees of trade union members.

Kazakhstan has been a member of the International Labor Organization since 1993. In 1996 Kazakhstan ratified two conventions:

No. 87 On Freedom of Association and Protection of the Right to Organize, 1948.

No. 111 Discrimination (Employment and Occupation) Convention, 1958.

We note that some of these laws are vaguely worded, and in some instances contradictory.

Compensation and Allowances

Specific issues relating to compensation, and allowances are regulated by resolution of the Government of the Republic of Kazakhstan No. 731, June 11, 1999, on approval of Instruction on the procedure of setting and payment of social allowance at employer's expense.

A normal five or six day working week is 40 hours. A number of exceptions, such as shorter working

hours and longer leaves are made for workers on harmful, hazardous, and physically hard jobs, for employees of 14-17 years of age and others. Information about terms of additional legal benefits for these categories of employees can be found in the Law On Labor and Instructions to the law.

The employer establishes a wage level, which should depend on the quantity, quality, and complexity of the work. The annual wage cannot be less than the legal minimal wage of USD 330 per annum¹. Salaries should be paid at least once a month. If wage arrears take place, the indebtedness is subject to fines at the refinancing rate of the National Bank of the Republic of Kazakhstan.

Overtime must be reimbursed at least 1.5 times the rate of work done during normal working hours. On normal days overtime of more than two hours per day is not allowed. Employees under the age of 18 cannot work overtime. Work on weekends and public holidays should be compensated at no less than a double rate, or the request of the employee can be counted towards vacation. Payment for night work must be at least 1.5 times the rate of normal day work. In practice overtime is often not paid.

Leaves

Each employee is guaranteed a paid vacation of least 18 calendar days per year. Public holidays are not counted towards vacation time. Longer leaves are guaranteed for workers on harmful, hazardous, physically hard jobs, and others.

Vacation is mandatory after the first full year of work. Vacation can be shifted to the next year only if it is agreed upon by the employee. It is forbidden not to provide vacation after two straight years of work. Terms and conditions of vacation can be specified in the contract. Vacation may be split into parts at the wish of the employee. In case of dismissal, the employer has to reimburse the worker for any unused vacation. Additional vacations are feasible on an unpaid basis after mutual agreement of both parties.

Sick leave is calculated on the basis of the average monthly remuneration rate. The amount of sick leave allowance is computed at the average wage rate, but the maximum required payment is 10 monthly payment indicators, or 8,230 KZT or approximately USD 54.

An allowance equivalent to a sick leave compensation, is given to mothers looking after sick children under 2 years of age, and family members who look after sick members of the family.

Maternity leave is provided for 70 calendar days before delivery and 56 days after delivery (or 70 days in case of complicated delivery). Adoption leave is given until a baby is 56 days old. Adoption and maternity leaves are compensated upon receipt of a sick list. If a sick list is not provided, the employer is not obliged to make such payments.

If the monthly wage is less than or equal to 10 monthly payment indicators, compensation must be paid at the wage rate. If the monthly wage is higher than 10 monthly payment indicators, the employer is obliged to pay only 10 monthly payment indicators.

Additional unpaid vacation is available for females after maternity leave and males/females after adoption leave until a baby reaches 1.5 years of age. The employer must keep the position for the employee available throughout this period.

Employees can be granted paid or unpaid additional vacation for training, exam preparation, and exam-taking purposes.

Travel Expense Regulations

The new Tax Code that came into effect from January 1, 2002 implemented significant changes into the travel expense regulations.

Before January 1, 2002, all private companies were required to apply rules that were determined for the state enterprises according to the Resolution of the Government of the Republic of Kazakhstan No. 1428 About confirmation of rules on business trips of the employees of state enterprises financed from the state budget, as well as deputies of the Parliament of the Republic of Kazakhstan

(with amendments), and the Resolution of the Government of the Republic of Kazakhstan No. 967 About business travel reimbursement norms in foreign currency. The Tax Code addresses these documents only in respect of limits for per diems.

Under the labor law the employer is required to provide an employee on business trips with per diems, and to reimburse travel and accommodation expenses. Per diems for trips around Kazakhstan are set up at two monthly payment indicators, i.e. about \$10, international travel norms differ from \$30 for CIS countries to \$70 for USA, UK, Germany, Japan, Italy, France and Canada. Departure and arrival days are regarded as one day for travel. Per diems are given in the local currency of the destination country. If such currency is not available, then these are paid in hard currency, usually US dollars.

Expenses connected with international travel, such as receipt of visas, passports, foreign exchange commissions, etc. are also subject to reimbursement. Travel and accommodation expenses are not limited but should be supported by original tickets and hotel bills.

The Tax Code requires proper documentation to support incurred travel expenses. Any excess of per diems higher than legal norms, are expensed differently than expenses that do not exceed them. The difference between the legal norm and the actual expense is a taxable benefit for an employee and also subject to pension payment and social tax.

Severance Payments

An employer has a right to annul a contract in case of company liquidation or a staff reduction. He has to notify an employee in writing at least one month in advance prior to the contract annulment. A one-time compensation equivalent to the monthly wage is to be paid to the employee.

Professional Disease Compensations

The employer is obliged to pay a social benefit for a temporary disability caused by a work trauma or a professional disease. If disability arose from carrying out professional activities, social benefit is to be paid at 100 per cent of the remuneration rate throughout the time of temporary disability.

Compensation for work trauma and professionally acquired permanent disability is determined on a case-by-case basis. For more information on such allowances, please see resolution No. 201 On confirmation of rules for reimbursement by enterprises, institutions and organizations of all types of ownership to workers and employees with damaged health and severe injuries arising from execution of work responsibilities.

Bonuses and Premiums

Employers have a right to use different incentives, such as premiums, bonuses, etc. to enhance efficiency of its employees.

Social Tax

The Tax Code regulates specific issues connected with social tax payments.

Social tax was introduced in 1999 and replaced previously existing multiple social taxes, i.e. pension deductions, social security, medical security and employment payments. According to new regulations, employers are to pay 21 per cent of the total payroll as a social tax. The reduced 11 per cent rate applies to payroll of foreign specialists at the positions of administration, management, engineers or technicians. The tax authorities have advised that they will require the work permits for those individuals to confirm the reduced tax rate.

Premiums, bonuses, and other social allowances are also subject to social tax, except for maternity leave allowance, and sick leave allowance.

Pension Fund Payments and Income Tax

The pension fund system was overhauled in January 1998. The reform transformed pay-as-you-go pension system to fully funded, defined contribution accounts. Until June 1997, the Kazakh pension system was a Soviet-style structure of benefits characterized by early retirement ages and a declining revenue base.

Accrued benefits from the old system will continue to be paid to workers upon retirement in proportion to the length of service up through December 1997. Pension fund contributions made after January 1, 1998 will be paid upon retirement from an individually funded savings account. Currently multiple private pension funds fiercely compete for depositors.

The normal retirement age is 63 for men and 58 for women, although there is a provision for early retirement for some types of jobs. Employers are not required to provide retirement benefits to employees nor contribute to retirement pensions of ex-employees. Employers are obliged to deduct ten per cent of employee's earnings to a pension fund chosen by an employee.

Personal income tax is also to be deducted from the gross wage by the employer on progressive scale. The Current minimum and maximum tax rates are 5 per cent and 30 per cent respectively. The maximum 30 per cent rate is applied as the annual salary reaches approximately USD38,000. Pension fund contributions are deducted for income-tax purposes.

Other Benefits

An employer has a right to train and educate its personnel internally or externally. If desired by the employer, an employee is to reciprocate by working for a period of time, which is specified in the contract. If the contract is annulled at the request of an employee or because of employee's fault, the employee should reimburse expenses commensurate with the amount of time invested after training.

Benefits Beyond Legal Requirements

Insurance

Virtually many companies provide medical insurance for employees and their family members. Most of the time, medical insurance is packaged together with dental insurance (with a typical coverage between USD 50 to USD 250 per year). Typical insurance packages include annual routine medical checks, diagnostic tests, ambulance, treatment in hospitals, and in-patient care. A few medical insurances provide free prescription medicines (limits vary from USD 60 to USD 100).

Co-payment and deductibles are practically non-existent in Kazakh market. There are no set limits for expenses, except for dental treatment and medication.

Leaves

Most companies provide longer than legally required vacation leave. A number of respondents provide additional maternity and sick leave benefits. Unpaid vacation is also available in most companies.

Additional maternity and sick leave benefits also lie as a heavy burden for the companies since such payments are not deductible for the employers. Employees pay income tax only on the excess of the legal norms allowance. The legal norm is not subject to individual income tax.

Loans and Aid

Previously many companies provided loans to their employees. Currently loan programs are virtually non-existent in Kazakhstan. One of the reasons for a sudden policy change was a new law On Banks and Banking in the Republic of Kazakhstan, issued on August 31, 1995 and effective since September 6, 1995. The legislative act prohibited non-bank institutions to provide interest-bearing loans. As many employee benefits are driven by legislation, this alteration in employee benefits policy has reflected the changes that companies have been undergoing in Kazakhstan.

Wellness Programs and Entertainment

Wellness and recreational programs are very popular among employees. Companies use them to strengthen teamwork, enhance employee motivation and improve work culture.

Companies provide some type of health club memberships, spas and other wellness programs. Several companies pay for only a portion of costs. Many companies finance entertainment, holiday celebrations and recreational activities.

Bank Services

A number of companies have reduced or provide no fee bank services for their employees. Such services may save a considerable amount of money because of the higher individual account bank fees in comparison to US bank commissions.

Hazardous Production Benefits

Additional benefits are available on hazardous production sites, such as safety equipment, and allowances for harmful/dangerous/hard working conditions. Generally there is a greater regard for safety training than in local companies.

Other Benefits

Pension plans, stock options and savings are not so common in Kazakhstan.

Some employers allow their staff members to use corporate discounts for their personal needs. Relocation benefits are available in a handful of companies.

The state of development of the Tax Code and the legal framework make it difficult for the companies to provide benefits above legal norms. In addition, a different taxation level for above-norm benefits does not help much in the improvement and diversification of such packages. Employee benefits tend to be non-tax deductible for the employer and taxable for the employee. To avoid implicit double taxation, some employers choose to include some of the extra benefits in the base salary, thus, reducing their taxable income. We believe that employee benefits will change together with the legislation. Our observations show that they are closely interconnected, and only a new legal framework will dramatically change current employee benefit practices.

Kazakhstani Work Permit Legislation

General

On June 19, 2001, the new Rule for obtaining permission for the right of labor and professional activities by foreigners was adopted by the Government. It defines the terms and procedures for obtaining work permits. This Resolution significantly changed existing procedures. However in general the work permit legislation is still quite confusing as it was designed to be interpreted by the local authorities that issue the work permits, therefore causing many conflicting interpretations to exist.

The following comments and requirements are based on the Rule, and Order for getting work permits and comments of state authorities issuing work permits. The actual requirements are significantly extended by the Ministry of Labor and local labor authorities. In practice it is extremely difficult to get the work permit.

The Government establishes the quota for import of foreign labor force per each region. Within that limit Ministry of Labor issues work permits. The quota is usually is limited for Almaty and Atyrau region and in practice it is much more difficult to obtain work permits for these regions.

Companies required to obtain permission for import of foreign labor

According to the Rule, legal entities wishing to employ foreigners must follow two steps: obtain permission to hire foreign employees, and based on that permission, employ personnel satisfying necessary requirements.

Persons required to obtain a work permit

Although the Rule does not require heads of branches of foreign legal entities or representative offices to obtain a permission, many local authorities require that they do.

Based on the logic of the Rule a work permit needs to be obtained for those employees who have signed a contract with a Kazakhstani legal entity and have come to Kazakhstan for work for more than 45 calendar days in any calendar year, including business trips. CIS citizens employed by a relevant employer must also obtain a work permit.

If employees do not have a contract with the local company, such as seconded personnel, this does not prevent a company from obtaining a work permit for these employees. However the process to obtain the work permit is designed so that such personnel must be hired by a local company.

Requirements to receive a work permit

There is no age limitations in the Rule, however the local authorities are limiting the maximum age by the pension age established by Kazakhstani legislation (currently 63 for men and 58 for women).

Only those individuals who have skills and experience in short supply and required in Kazakhstan may be invited to work. As a rule, it is not permitted to import unskilled laborers or specialists who could be replaced by Kazakhstani nationals. A commission from the local authorities decides in each case the necessity of a specialist for Kazakhstan and whether it is possible to find such a specialist among unemployed individuals in Kazakhstan.

Application for a work permit

The application for a work permit is significantly changed by the Ministry of Labor and local authorities versus the requirements of the Rule.

The Rule requires:

- before applying to the Ministry for permission an employer should conduct the following actions that will demonstrate that it was seeking local labor and could not find appropriate personnel;
- inform the employment agency about vacancies;
- publish vacancy announcements in mass media in Kazakh and Russian languages.

The work permits are different for three categories of employees:

- first category—for managers;
- second category—for qualified personnel (equal to Kazakhstani specialized secondary and high education); and
- and third—for qualified workers.

Depending on the category, the Ministry of Labor may apply additional conditions for the employer as follows:

- for the first category—education of local qualified specialists who should replace foreign employees after their departure;
- for the second category—training of Kazakhstani specialists in order to replace foreign personnel, establishing a local-foreigner ratio, and regular reporting to the employment agency information on required personnel; and
- for the third category—training of Kazakhstani specialists in order to replace foreign personnel, create new working places for local labor force, regular reporting to the employment agency information on required personnel.

The employer should approve the education program for its personnel. According to that program, the employer must issue qualification certificates confirming the qualification.

In order to obtain a work permit the employer should submit to the authorized local employment agency the following documents:

- application in a standard form;
- proof of the work done to find necessary personnel from Kazakhstani citizens; and
- proof that the vacancies require the knowledge of foreign languages, overseas experience, and the use of modern technologies.

The authorized local agency (currently Department of Labour, Employment and Social Defense of population (DLE)) within 10 days should give a conclusion whether the attraction of requested number of foreign employees is reasonable and send their conclusion with all documents to the Ministry of Labor. The Ministry has also 10 days for consideration and if approves the conclusion of the local agency issues permission.

According to the received permission the employer can employ foreign personnel and submit the list of employed people with their personal details, qualification, position to the authorities agency. The position should be determined according to the Common Tariff Qualification Directory of Positions that is used in Kazakhstan. The employer should provide information that these people meet qualification requirements for positions under the work permit and the labor contract that should be in accordance with the Kazakhstani labor law.

The last requirement makes it difficult to obtain a work permit for seconded employees.

The Order that was issued by the Ministry of Labor provides more information on the actual steps that should be followed by companies, however at the same time it extends requirements, established by the Rule. It also seems that the Order does not follow the Rule that the company should obtain permission first and then hire people. In addition companies face in practice that additional papers and actions should be obtained.

In addition to the requirements, established by the Rule, the Order requires the following:

- the general information on the employer, such as type of activities, turnover, number of employees, including local, number of previously issued work permits and their current status, information whether the terms of getting previous work permits were fulfilled (additional work places created, education and training programs fulfilled, etc). Company's statutory documents, statistic registration card;
- the publication in a republican newspapers is limited to Zhas Alash, Vremya and any city newspaper. Two original copies of each newspaper should be submitted. In practice the agency requires that the advertisement should contain description of required qualifications and responsibilities;
- information on a number of people sending their resumes to the company based on the announcement in newspapers and on resumes sent by the employment agencies, describing reasons why they were refused; and
- for proof of the required qualification the Order requires to provide brief description of required qualifications and responsibilities, notarized copy of Diploma or any other document confirming the education of the candidate, notarized copy of the document that proves the working experience of the candidate.

During the second step the employer should submit the following documents to the authorized labor agency:

- The list of employees;
- Notarized copy of the permission;
- Notarized copies of Diploma on getting education;
- Labor contract;
- Medical certificate on AIDS test;
- Documents confirming professional experience;
- Foundation documents of employer.

The certificate from the bank certifying that the deposit has been received should be submitted with the above documents (see below).

The law does not establish a specific limit on the number of foreign employees that a company may invite. In practice, however, the Ministry of Labor does not usually grant a company a large number of work permits (10-20). Again, there is no pre-set number—the special commission reviews each individual's case separately, basing its judgment on whether the person's experience, specialty and knowledge is necessary and not available amongst Kazakhstani citizens.

Guarantee Deposit

A deposit equal to the cost of a return air ticket (economy class) to the nearest airport of the employee's home country must be placed in a special deposit account for each employee.

If no air flights are available, the deposit is equal to the amount of a return railway ticket to the nearest railway station of employee's home country.

The funds placed in the special deposit account may not be withdrawn or used without written permission of Ministry of Labor and Social Protection of the RK. Funds may be withdrawn when an individual has left Kazakhstan and the Ministry of Labor and Social Protection has confirmed this.