

## REMOTE WORK: THE CONCLUSION OF AN EMPLOYMENT CONTRACT

**Isvailov Atahozha Aidarovith**

*Candidate of Law,*

*M. Auezov South Kazakhstan State University,*

*Shymkent, Kazakhstan*

**Omarbaeva Lazzat Kasymbekovna**

*Senior Lecturer,*

*M. Auezov South Kazakhstan State University, Shymkent, Kazakhstan*

**Salybek Nazira Muratovna**

*Senior Lecturer,*

*M. Auezov South Kazakhstan State University,*

*Shymkent, Kazakhstan*

**Abstract.** This article considers the principal provisions for execution of employment contract for distance working, provided for by applicable labor legislation of the Republic of Kazakhstan. Advancements in technology and Internet contributed to development of non-standard form of employee labor function performance that has occurred outside the employer's location, such as distance working. Currently, a distance work is poorly regulated in terms of legislation, and the availability of deficiencies gives rise to many questions for the parties of employment relations. The applicable Labor Code of the Republic of Kazakhstan stipulates only one Article that considers the distance work and the absence of detailed consideration of this work requires its further revision. In our opinion, execution of employment contract for distance work with foreign citizens being within the territory of the Republic of Kazakhstan and foreign citizens outside this territory shall be provided separately in the content of employment agreement. The regulation of distance work requires its detailed consideration and detailed supplementation of the legislation of the Republic of Kazakhstan for this issue. The combining of work by employee at the employer's location and distance work is widely used in world's practice, in our opinion, such combination of works shall be stipulated and supplemented by the content of Labor Code of the Republic of Kazakhstan with such form of work as part-time job. When considering the requirements for the form of employment contract execution, it is worth pointing out that the legislation of the Republic of Kazakhstan stipulates its written form only. Taking into account that the electronic document flow is prescribed by legislation of the Republic of Kazakhstan and does not have a prohibition on its use in employment and labor law, we offer to stipulate this flow when executing the employment contract for distance work.

**Keywords:** Employment contract for distance working, document, legislation, employment and labor law, world's practice, employer, employee, obligation, rights, written form.

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### **Introduction**

Currently, employment contract represents the document evidencing the fact of execution of rights and obligations assumed on the one side of hired worker, and on the other side, employer. The right to work guaranteed by the Constitution of the Republic of Kazakhstan is implemented by each participant of employment relations, by personal exercise of his/her labor function.

According to Cl.1 Article 24 Constitution of the Republic of Kazakhstan, every person has a right to freedom of labor, free choice of occupation and profession [1].

The right to work is one of the most important international human rights, which is stipulated in principal provisions of the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and the European Social Charter.

According to Cl.1 Article 23 Universal declaration of human rights, every person has a right to work, free choice of employment, just and favorable conditions of work and protection against unemployment [2].

Cl.1 Article 6 International Covenant on Economic, Social and Cultural Rights, states that the states taking part in this Covenant recognize the right to work, which includes the right of every person to get the capability to earn a living by work freely chosen by him/her or for which he/she has freely agreed, and take appropriate steps to secure this right [3].

Part 1 Cl.1 European Social Charter, contracting parties recognize the arrangement of conditions ensuring the effective enjoyment of the following rights and principles as a purpose of own policy which will be performed by them using all proper facilities of both national and global reach: every person should have an opportunity to earn a living by freely chosen labor [4].

In accordance with the world's practice and applicable legislation of the Republic of Kazakhstan, implementation of labor is performed with the execution of employment contract between the employer and employee.

According to part 1 Article 21 Labor Code of the Republic of Kazakhstan, employment relations arise between the employee and employer on the basis of employment contract concluded in accordance with this Code, except as required by law of the Republic of Kazakhstan [5].

Proceeding from the above except for special cases, employment relations are considered to be established from the date of employment contract execution. According to the above, it can be said that the employment contract is a generally acknowledged legal form of enjoyment of human right to freedom of labor.

#### **A main part**

In considering the requirements for the content of employment contract specified in the applicable Labor Code of the Republic of Kazakhstan, it follows that the main condition is its execution between the Parties to the contract in mandatory written form. The employment contract also stipulates the employee labor function, in the process of fulfillment of which his/her interests will be executed, and the employer will observe the obligation to provide the employee with work and working conditions in accordance with the agreed labor function.

According to Cl.1 part 1 Labor Code of the Republic of Kazakhstan, employment contract is a written agreement between the employee and employer, in accordance with which the employee undertakes to perform a certain work (labor function) personally, observe the labor routine, and the employer is obliged to provide the employee with work according to stipulated labor function, to provide the working conditions prescribed by this Code, the laws of the Republic of Kazakhstan and other regulatory legal acts of the Republic of Kazakhstan, collective agreement, acts of employer, pay the salary to employee on time and in full [5].

The employment contract is different from other types of contracts by that the employee shall perform the settled work according to the agreed qualifications and profession, fulfillment of labor function shall be carried out by employee by him-/ herself in accordance with the Labor Regulations, employee's labor shall be subject to mandatory payment by employer.

According to Article 27 Labor Code of the Republic of Kazakhstan, distinctive features of an employment contract from other types of contracts is the availability of one of the following conditions: 1) execution of work (labor function) by employee under specific qualification, специальности, профессии или должности; 2) execution of obligations personally with abidance to labor routine; 3) receipt of compensation for labor by employee [5].

The employment contract represents a bilateral agreement of the Parties, which has certain requirements for its content, namely: date of contract execution and number of its registration; information identifying the employee and the name of employer; labor function of employee; workplace; validity of the employment contract; date of beginning of labor function are indicated; working hours and rest time are specified: amount of basic payment and various extra charges, if any; stipulate the amendments to the terms of the contract and conditions for its termination; cases of liability of the Parties; requisites of the Parties to the contract are indicated in the conclusion.

Subject to the requirements of applicable labor legislation of the Republic of Kazakhstan, for execution of employment contract, employee shall prepare a package of the following documents such as: ID card and for person being under age, certificate of birth; for the foreign residents, a residence permit, and for persons without citizenship being permanent residents in the country, relevant certificates; record of required education or qualifications; work record book or document evidencing the duration of employment; certificate evidencing medical examination.

In addition, upon the execution of employment contract, age of employee is taken into account, according to which the labor function of employee and his/her working conditions are identified.

The advancements in technology and Internet has facilitated the development of non-typical form of the employee labor function performance taking place outside the employer's location, such as distance working. Currently, a distance work is poorly regulated in terms of legislation, and the availability of deficiencies gives rise to many questions of the Parties to employment relations. The applicable Labor Code of the Republic of Kazakhstan provides one Article only, that considers a distance work and the absence of detailed consideration of this work, requires its further revision.

According to Article 138 Labor Code of the Republic of Kazakhstan, a distance working is a particular way of organizing the labor process outside the employer's location with the use of information and communication technology in the working process [5].

This implies that the hiring of employee for distance work located at the remote distance from the employer is possible, and his/her being within the employer territory is not required, here the question arises as to whether the employer has a right to engage the employee of a foreign state living within the territory of another state to work remotely. On the one hand, if we consider the applicable legislation of the Republic of Kazakhstan, then the execution of employment contract with foreign worker permanently residing within the territory of the Republic of Kazakhstan requires the residence permit, which is included to the mandatory list of documents for execution of employment contract. A list of documents required for execution of employment contract for distance work with a foreign worker living outside the Republic of Kazakhstan is not currently regulated by legislation of the Republic of Kazakhstan. Also, applicable legislation of the Republic of Kazakhstan does not provide the receipt by employer of permission from government agencies to engage the foreign citizens residing in other countries to work remotely.

Having regard to the above, we offer that Cl.2 part 1 Article 32 Labor Code of the Republic of Kazakhstan shall be revised to read:

2) a residence permit or stateless person certificate (for foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan) or refugee certificate; for foreign citizens residing in other countries, a passport or identity card.

On the other hand, the employer needs to arrange the safe working conditions for the employee, in this case the question also arises of observing the working conditions of employer and conducting investigation for accident related to the labor activity of foreign citizen being within the territory of another state.

In our opinion, the content of employment agreement shall separately stipulate the conclusion of employment agreement on distance work with foreign citizens being within the territory of the Republic of Kazakhstan and foreign citizens outside its territory. The regulation of distance work requires its detailed consideration and detailed supplementation of legislation of the Republic of Kazakhstan for this issue.

The employment and labor law of the Republic of Kazakhstan stipulates the fixed recording of working time for remote workers, monitoring of which is difficult for the employer and, accordingly, application of disciplinary sanctions also remains unclear. At its core, disciplinary sanctions are applied if the employee violates labor discipline, and even if the employee respected the working time, the employer does not have the ability to determine the actual state of the employee, is it permissible for the employee to perform the labor function. In this case, the employer's control is absent, and the possibility of accident at work is allowed, problem may arise when reasoned the occurrence of similar situation through the fault of employee, since the employer will not have the necessary evidence.

The combining of work by employee at the employer's location and distance work is widely used in world's practice, in our opinion, such combination of work should be provided and supplemented for the content of the Labor Code of the Republic of Kazakhstan with such form of work as part-time work.

In considering the requirements for the form of employment contract execution, it is worth pointing out that the legislation of the Republic of Kazakhstan stipulates its written form only. The employment and labor law of the Russian Federation allows the execution of employment contract on distance work by exchanging electronic documents of employee and the employer, subsequently ensuring the submission of completed documents in paper form.

According to Article 312.2 Labor Code of the Russian Federation, employment contract on distance work and agreements on changing the terms of distance work contract specified by the Parties can be executed by exchange of electronic documents. In the event if the employment contract on distance work is executed using the exchange of electronic documents, employer shall send to the remote worker a registered copy of employment contract in paper form, not later than three calendar days from the date of execution of this employment contract by registered mail with notification [6].

The legislation of the Republic of Kazakhstan also provides for electronic document flow, which is used in various areas of activity of information and communication technology users.

According to Article 6 Republic of Kazakhstan Law "On electronic document and electronic signature", electronic document flow is performed in state and non-state information systems based on the following principles: 1) operation of various electronic document management systems; 2) use of electronic documents in any areas of activity where information and communication technology is used to create, process, store and transmit data; 3) transmission of electronic documents using any information systems [7].

Considering the fact that electronic document flow is stipulated by legislation of the Republic of Kazakhstan and does not have a prohibition on its use in employment and labor law, we propose to stipulate this flow in execution of employment contract on distance work as revised by employment and labor law of the Russian Federation.

In accordance with the aforementioned, we propose to supplement the Article 138 Labor Code of the Republic of Kazakhstan with the following text: 4. Employment contract on distance work and agreements on changing the conditions of distance work contract by the Parties can be executed using the exchange of electronic documents. In the event that the employment contract on distance work is executed using the exchange of electronic documents, employer shall send to the remote worker a registered copy of employment contract in paper form, not later than three calendar days from the date of execution of this employment contract by registered mail with notification.

#### **Analysis methods**

During the writing of Article, we have considered certain provisions of international treaties, Constitution of the Republic of Kazakhstan, employment and labor law of the Republic of Kazakhstan and the Russian Federation. In the process of legal acts research, we have applied the general specific methods and specific scientific methods. The general scientific cognition methods: analysis and synthesis, induction and deduction, analogy and modeling. The specific scientific methods: formal – logical and comparative.

#### **Conclusion**

In considering the provisions of employment contract on distance work, provided for by applicable labor legislation of the Republic of Kazakhstan, we have offered the following suggestions:

Since the list of documents required for execution of employment contract on distance work with the foreign worker living outside the Republic of Kazakhstan is not currently regulated by legislation of the Republic of Kazakhstan, we propose that the Clause 2 part 1 Article 32 Labor Code of the Republic of Kazakhstan shall be revised to read:

2) a residence permit or stateless person certificate (for foreigners and stateless persons permanently residing within the territory of the Republic of Kazakhstan) or refugee certificate; for foreign citizens residing in other countries, a passport or identity card.

Considering that the employer shall arrange the safe working conditions for the employee, the question arises for observing the work conditions by employer and conducting investigation for accident related to labor activity of a foreign citizen being within the territory of another state. In our opinion, content of the employment contract shall separately provide for conclusion of employment agreement on distance work with foreign citizens located within the territory of the Republic of Kazakhstan and foreign citizens being outside its territory. The regulation of distance work requires its detailed consideration and detailed supplementation of legislation of the Republic of Kazakhstan for this issue.

The combining of work by employee at the employer's location and distance work is widely used in world's practice, in our opinion, such combination of work shall be provided and supplemented for the content of the Labor Code of the Republic of Kazakhstan with such a form of work as part-time work.

Taking into account that the electronic document flow is provided for by legislation of the Republic of Kazakhstan and does not have a prohibition on its use in employment and labor law, we propose to supplement the Article 138 Labor Code of the Republic of Kazakhstan with the following text: 4. Employment contract on distance work and agreements on changing the conditions of employment contract defined by the parties for distance work can be executed using the exchange of electronic documents. In the event if employment contract on distance work was executed by exchange of electronic documents, employer shall, no later than three calendar days from the date of execution of this employment contract, send to the remote employee by registered mail a notification, a duly executed copy of this employment contract in paper form.

Advancements in Information and communication technology have contributed to appearance of new form of labor process outside the employer's location, such as distance working. Currently, remote workers and employers are very interested in a more clear regulation for execution of employment contract on distance work, and therefore it seems necessary to pay special attention for resolution of this issue.

#### **References**

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2. Universal Declaration of Human Rights (adopted by Resolution 217 A (III) of the UN General Assembly dated December 10, 1948)
3. International Covenant on Economic, Social and Cultural Rights 2200 A (XXI) adopted by Resolution of the General Assembly dated December 16, 1966)
4. European Social Charter (adopted in Turin, October 18, 1961)
5. Labor Code of the Republic of Kazakhstan dated November 23, 2015 # 414-V
6. Labor Code of the Russian Federation dated December 30, 2001 # 197-ФЗ
7. Republic of Kazakhstan Law dated January 07, 2003 # 370-II "On electronic document and electronic signature"