



KAZAKHSTAN

Decent Work Check 2019

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WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: www.decentworkcheck.org During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

Major Legislation on Employment and Labour

1. Civil Code of the Republic of Kazakhstan (special part) 1999 (version 04.07.2018)
2. Code of the Republic of Kazakhstan about health nation and health care system 2009 (version 04.07.2018)
3. Code of the Republic of Kazakhstan of Administrative Offences 2014 (version 22.07.2018)
4. Constitution of the Republic of Kazakhstan 1995
5. Criminal Code of the Republic of Kazakhstan 2014 (version 10.01.2018)
6. Entrepreneurial Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
7. Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
8. Law of the Republic of Kazakhstan 'About compulsory insurance of employee against accidents while performing of labour (official) duties' 07.02.2005 № 30-III (version 24.05.2018)
9. Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II (version 02.07.2018)
10. Law of the Republic of Kazakhstan 'About employment of the population' 06.04.2016 № 482-V (version 04.07.2018)
11. Law of the Republic of Kazakhstan 'About holidays in the Republic of Kazakhstan' 13.12. 2001 № 267-II (version 03.07.2017)
12. Law of the Republic of Kazakhstan 'About minimum social standards and guarantees' 19.05.2015 № 314-V (version 05.07.2018)
13. Law of the Republic of Kazakhstan 'About pension provision in the Republic of Kazakhstan' 21.06.2013 № 105-V (version 02.07.2018)
14. Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI (version 27.04.2018)
15. Law of the Republic of Kazakhstan 'About social protection of citizens affected by the nuclear tests at Semipalatinsk nuclear testing facilities' 18.12.1992 № 1787-XII (version 02.07.2018)
16. Law of the Republic of Kazakhstan 'About social protection of disabled persons in the Republic of Kazakhstan' 13.04.2005 № 39-III (version 02.07.2018)
17. Law of the Republic of Kazakhstan 'About state allowances to families with children' 28.06.2005 № 63-III (version 02.07.2018)
18. Law of the Republic of Kazakhstan 'About state social allowance for disability, loss of the breadwinner and age in the Republic of Kazakhstan' 16.06.1997 № 126-I (version 06.04.2016)
19. Law of the Republic of Kazakhstan 'About trade unions' 27.06.2014 № 211-V (version 11.07.2017)
20. Order of the acting Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of Rules of use of pension benefits by age, seniority and the state social benefits for disability, loss of the breadwinner by medical and social institutions (organizations)' 24.02.2016 № 139
21. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About some measures to implement the Law of the Republic of Kazakhstan 'About state allowances to families with children' 05.05.2015 № 319

(version 24.11.2017)

22. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the list of works, which prohibits the employment of workers under the age of eighteen, the marginal rates carry and move weights for employees, who have not reached the age of eighteen, and a list of jobs for which prohibited the employment of women, the marginal rates of lifting and manual handling of loads by women' 08.12.2015 № 944
23. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the Rules of development, approval and review of the safety and labour protection by the employer' 30.11.2015 № 927
24. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of forms for registration materials of the investigation of accidents at work' 28.12.2015 № 1055
25. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of rules and terms of training, coaching and knowledge tests on the safety and security of employees' 25.12.2015 № 1019
26. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the forms of the state labour inspector acts' 30.11.2015 № 904
27. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the Rules of appointment and payment of social benefits for temporary disability' 30.11.2015 № 907
28. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the list of illness with term of temporary disability for more than two months' 28.12.2015 № 1033
29. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of rules of state basic pension payments from the budget, as well as the purpose and implementation of pension payments, the state basic social allowances for disability, loss of the breadwinner and age, state special benefits from the authorized organization' 14.04.2015 № 223 (version 12.01.2016)
30. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the list of works, which prohibits the employment of workers under the age of eighteen, the marginal rates carry and move weights for employees, who have not reached the age of eighteen, and a list of jobs for which prohibited the employment of women, the marginal rates of lifting and manual handling of loads by women' 08.12.2015 № 944
31. Order of the Minister of Labour and Social Protection of Population of the Republic of Kazakhstan 26.06.2018 № 266
32. Resolution of Board of Agency of the Republic of Kazakhstan on Regulation and Supervision of Financial Market and Financial Organizations 'About approval of normative legal acts regulating the organization and implementation of activities on compulsory insurance of employee from accidents during execution of labour (service) duties' 01.03.2010 № 28 (version 30.05.2016)
33. Resolutions of the Government of the Republic of Kazakhstan 'About approval of the list of guaranteed free medical care' 15.12.2009 № 2136 (version 27.01.2014)

34. Resolutions of the Government of the Republic of Kazakhstan 'About determination of rates of social benefits for temporary disability' 28.12.2015 № 1103
35. Resolutions of the Government of the Republic of Kazakhstan 'About approval of the list of guaranteed free medical care' 15.12.2009 № 2136 (version 27.01.2014)
36. Special laws about the length of the annual paid leave (for example, Law of the Republic of Kazakhstan 'About science' 18.02.2011 № 407-IV)

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Kazakhstan has ratified the Conventions 95 & 131 only.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Constitution of the Republic of Kazakhstan 1995
- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI (version 27.04.2018)
- Law of the Republic of Kazakhstan 'About minimum social standards and guarantees' 19.05.2015 № 314-V (version 05.07.2018)
- Code of the Republic of Kazakhstan of Administrative Offences 2014 (version 22.07.2018)
- Criminal Code of the Republic of Kazakhstan 2014 (version 10.01.2018)

Minimum Wage

Constitution of the Republic of Kazakhstan guarantees everyone the right to get the minimum wage. The minimum wage in Kazakhstan is set at the national level. It is revised every year by the Law on State Budget.

The minimum wage is determined as a sum per hour and per month. In accordance the Labour Code, the monthly minimum wage should not be lower than the living wage for an employed person and it is paid in proportion to the working time. The minimum wage does not include additional payments and increments, compensation and social benefits, bonuses and other additional payments. The hourly minimum wage cannot be less than the minimum monthly wage divided by the average number of working hours, according to the balance of the working time for the relevant calendar year. Also, there is the minimum social standard of minimum monthly wages, that includes:

- 1) normal working hours per month;
- 2) work standards of the first grade at the normal conditions of labour.

Payment of salary not in full amount can lead the administrative fine for officials in the amount of 30 monthly calculation indices, for small businesses or non-profit organizations - 60 monthly calculation indices, for medium businesses - 100 monthly calculation indices, for big businesses - 150 monthly calculated indices. If this situation repeats and is connected with using of money for other purposes it will entail criminal liability: a fine of up to 200 monthly calculation indices or correctional works in the same amount, or public works for up to 200 hours, or an arrest for up to 50 days, with deprivation of the right to hold certain positions or engage in certain activities for up to 3 years or without it. The employee has the right to complain to the Labour Inspection or to sue (within a year from the day when the employee learned about the violation of his right).

Sources: §28 of the Constitution of the Republic of Kazakhstan; §104, 160 of the Labour Code; § 8 of the Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI; §12 of the Law of the Republic of Kazakhstan 'About minimum social standards and guarantees' 19.05.2015 № 314-V; § 87 of the Code of Administrative Offences; § 152 of the Criminal code

For detailed minimum wage rates, please refer to the section on minimum wages.

The text in this document was last updated in February 2019. For the most recent and updated text on Employment & Labour Legislation in Kazakhstan in Russian, please refer to: <https://mojazarplata.kz/>

Regular Pay

Labour Code defines wages as remuneration for labour depending on the qualifications of the employee, the complexity, amount, quality and conditions in which work is performed, as well as payments of a compensatory and incentive nature. One of the fundamental rights of a worker is “timely and full payment of wages in accordance with the conditions of the employment contract and the collective bargaining agreement”. The Labour Code establishes guarantees of the labour remuneration which include monthly and hourly minimum wage levels, restrictions on deductions from workers’ wages and procedure and time schedule for payment of wages. Workers’ wages are determined depending on professional skills, complexity/difficulty, quantity and quality of work performed and working conditions. The Labour Code also provides for higher compensation to the workers engaged in heavy work, work with harmful or hazardous working conditions. The amount of such compensation is determined by a collective agreement or employer taking into account industry factors and classifying working conditions on the degree of hazard and danger as defined in a sectoral agreement. Law on National Budget provides only the minimum amount that must be paid to every worker engaged for normal working hours. The maximum hourly or monthly wage is not specified under the law. Remuneration is paid in tenge.

According to the Labour Code, the wage must be paid once every month and not later than the 10th day of the following month. The exact payroll date is established by the employment contract. In the event of coincidence of the payroll date with public holiday or weekend, workers receive wages the day before. Employers are further required to notify a worker in writing or in electronic form (payslip) every month about the components of wage due in the corresponding period, the amount of and grounds for deductions including information about mandatory pension contributions as well as the aggregate sum due for payment. The system of labour compensation must provide for the basic wage (relatively constant part of the wage) to constitute at least 75 per cent of the average monthly wage of employees, excluding one-time incentive payments.

Employers are under obligation to pay full wages to workers in a timely manner, otherwise employers are liable in accordance with the laws of republic. In the case of arrears in payment, employer is required to not only pay the arrears but also the penalty for each day of delay after wages became due. The penalty (in the form of interest rate) is calculated on the basis of the official rate of refinancing of the National Bank of the Republic of Kazakhstan.

Deductions from an employee's wages can be made only for cases specified by the Labour Code. Firstly, deductions are allowed by court judgements. Secondly, deductions from the employee's salary to pay off his debt to the employer can be made in the following cases (with a written notice to the employee):

- advance pay issued on account of wages;
- amount given to an employee for travel or other expenses which was not spent and was not refunded instantly by the employee (and similarly in the case of failure to confirm the cost of trip through documentation);
- reimbursement of employer costs related to employee training (apprenticeship agreement) in proportion to the unfinished term of working out because of early termination of the labour contract;
- the transfer or withdrawal from the annual paid leave;
- in other cases with the written consent of the employee.

If payroll deduction is over several writs of execution, the monthly deduction cannot exceed 50% of wages due to the worker.

Sources: §22, 102, 103, 107, 113-115 of the Labour Code

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Kazakhstan has ratified the Convention 171 only.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)

Overtime Compensation

In accordance with the Labour Code, the normal working hours should not exceed 40 hours per week. Employment contracts may envisage a shorter duration working time with payment at the same level as for normal duration of working time.

Kazakh labour legislation makes an exception for child workers, adolescent workers, workers engaged in heavy work or work in harmful and hazardous working conditions and employees with disability (first and second group). Employees aged fourteen to sixteen years are allowed to work no more than 24 hours per week and for employees aged sixteen to eighteen years, the maximum limit is 36 hours per week. Similarly, for workers engaged in hazardous work and those with disability (first and second group), the maximum working hours are 36 hours per week. The five-day or six-day working week may be established by the employer in accordance with the terms and conditions of employment, collective agreements or internal rules of the enterprise. The duration of daily working hours may not exceed 8 hours except in cases provided under the law.

Overtime work must not exceed two hours during the day, but in heavy, harmful and hazardous work, the limit is reduced to one hour. The total duration of overtime work must not be more than 12 hours per month and 120 hours per year. These limitations are not applicable during the emergency situations or threat for human life and health.

As a rule, overtime work is allowed in the presence of worker's written consent. However, there are some exceptions. Involvement of the employee to work overtime is allowed without any consent in the following cases:

- prevent a disaster, industrial accident or to eliminate the consequences of such disaster or accident;
- strengthen the country's defences;
- remove unforeseen circumstances that disrupt functioning of the centralized systems of water supply, gas supply systems, heating, lighting, etc.;
- for continuing work if a shift partner fails to turn up for work if the work cannot be interrupted, with immediate measures being taken to find a replacement employee;
- emergency to the threatened loss of health or death.

Overtime work is forbidden for pregnant women, minors (under 18 years) and persons with disabilities.

Overtime work is compensated at 150% of the normal hourly rate of pay. Exact rates are established by employment contract, collective agreement or internal rules of the organization. Compensation for overtime in the case of piece-rated workers cannot be less than 150% of the fixed daily/hourly wage rates. The parties may agree to provide hours of rest at the rate of one hour of rest for one hour of overtime work.

Sources: §68, 69, 77, 78 and 108 of the Labour Code

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Night Work Compensation

Night work is the work done between 22:00 and 06:00. Every hour of night work is paid at a higher rate, according to the conditions of the employment contract, the collective agreement, the act of the employer, but not less than 150% of the normal daily/hourly wage rate.

Night work is forbidden for minors (under 18) and pregnant women (once they have provided the employer with certificate of pregnancy). Night work is however allowed for persons with disabilities in the presence of worker's written consent and medical report. The employer cannot involve in night work the following employees (without the written consent):

- 1) women with children aged up to seven years, and others, with children aged up to seven years without a mother;
- 2) workers with disabled children up to the age of sixteen.

Sources: §76 and 110 of the Labour Code

Compensatory Holidays / Rest Days

Working on weekends and public holidays is allowed with a written consent of the employee or at his request on the basis of employer's internal rules. Labour Code also provides for exception in which case employee consent is not required:

- prevent a disaster, industrial accident or to eliminate the consequences of such disaster or accident;
- prevention and investigation of accidents at work, death or damage of property;
- complete of unforeseen work;
- shift work.

Working on weekends and public holidays is forbidden for pregnant women.

At the request of the employee, who worked on the rest day or public holiday, he may be given another day of rest or higher compensation for working on day-off or public holiday.

Sources: §85 and 86 of the Labour Code

Weekend/Public Holiday Work Compensation

Every hour of worked on the weekend or public holiday is paid at a higher rate, according to the conditions of the employment contract, the collective agreement, the internal rules of the employer. The minimum rate specified by Labour Code is 150% of the normal wage rate.

Sources: §109 of the Labour Code

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

Kazakhstan has not ratified any of the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Special laws about the length of the annual paid leave (for example, Law of the Republic of Kazakhstan 'About science' 18.02.2011 № 407-IV)
- Law of the Republic of Kazakhstan 'About holidays in the Republic of Kazakhstan' 13.12. 2001 № 267-II (version 03.07.2017)

Paid Vacation

According to the Labour Code, there are two types of annual labour paid leave: basic and additional. Paid annual leave is intended for the employee to rest, restore his working capacity, strengthen his health and fulfil other personal needs. It is granted with retention of job and average earnings. Vacations are formalized by the act of the employer/internal rules of the organization.

The length of basic paid annual leave is 24 calendar days unless a longer vacation period is established by special laws, employment contracts, collective agreements and acts of the employer. For example, PhD has right to get 56 calendar days of the annual basic paid leave. The additional paid annual leave is granted to employees engaged in heavy work, work under harmful and hazardous working conditions and employees with disabilities (group I & II) with a duration of at least six calendar days. For other categories of workers, provision of additional paid annual leave and its minimum duration are established under the relevant laws. Employment contracts or collective agreements may provide annual leave as an incentive for long and continuous service, performance of important, complex and urgent work as well as work of other nature. The duration of paid annual leave is calculated in calendar days, excluding public holidays. In calculating the total duration of paid annual leave, additional and basic leave components are added.

The right to get annual leave connects with the length of service. For the purpose to get this leave it includes:

- actual working time;
- time of job retention without actual working;
- temporary disability, pregnancy;
- time, when the employee actually did not work before reinstatement.

The paid annual leave for the first and next years of service may be given at any time of the year, in accordance with the vacation schedule (taking into account the views of workers) and parties' agreement. If there are changes in the vacation schedule, the employer will notify workers no later than two weeks before its beginning. Working year is twelve calendar months, calculated from the first day at work of the employee.

In the situation of combining jobs, the paid annual leave is granted at the same time with the leave from the main job. If the duration of annual paid leave at the second place of work is less than its length for the main work, the employer at the request of the employee may give him leave without pay.

By agreement between the employee and the employer, paid annual leave may be divided into parts. In this case, one of the parts shall be at least two calendar weeks. Postponement or recall from the annual paid leave are allowed by the act of the employer.

Payment for annual leave is made not later than three working days before it.

It is prohibited not to grant annual paid leave for two years in a row. Postponement of the annual paid leave is permitted in the following cases:

- temporary disability;
- maternity leave.

The annual paid leave may be interrupted by the employer only with the written consent of the employee. The remaining part of the paid annual leave is available for the current or the next working year. In this case, by the agreement between the employee and the employer, compensation may be paid instead of getting unused part of the vacation. It is not allowed to recall from the annual paid leave minors (under 18), pregnant women and workers in heavy, harmful and/or dangerous work.

In the event of fixed term contract, paid annual leave may be granted before its expiry or in such a way that the termination day of employment contract is the last day of paid annual leave. On termination of an employment contract, the worker receives financial compensation for the unused days of annual paid leave.

Sources: §87-96 of the Labour Code; §13 of the Law of the Republic of Kazakhstan 'About science' 18.02.2011 № 407-IV

Pay on Public Holidays

The national and public holidays in the Republic of Kazakhstan are recognized as nonworking days:

December 16 - 17 - National Day of the Republic of Kazakhstan Independence;

January 1 - 2 - New Year;

March 8 - International Women's Day;

March 21 - 23 - Nauryz;

May 1 - Holiday of the unity of Kazakh nation;

May 7 - Day of Defender of the Fatherland;

May 9 - Victory Day;

July 6 - Day of Capital;

August 30 - Day of the Constitution of the Republic of Kazakhstan;

December 1 - Day of the First President of the Republic of Kazakhstan.

Kurban Bayram (first day) and Christmas (January 7) are also holidays.

Every hour of work at the weekend or public holiday is paid at a higher rate, according to the conditions of the employment contract, the collective agreement, the act of the employer/internal rules of employer, but not less than 150% of the normal hourly or daily rate.

Sources: §84-86, 109 of the Labour Code; §1-3, 5 of the Law of the Republic of Kazakhstan 'About holidays in the Republic of Kazakhstan' 13.12.2001 № 267-II

Weekly Rest Days

In a five-day working week, employees are provided two days a week as days-off while in a six-day working week, there is provision for one day-off. A common holiday is Sunday. The second day of rest at five-day working week is set by collective agreement or internal regulations.

Weekends at organisations, where suspensions in work are not possible, are available on different days of the week alternately to each group of employees. An employee on a business trip gets the days-off in accordance with the internal regulations of the employer, to whom it is directed.

Sources: §84 of the Labour Code

04/13 EMPLOYMENT SECURITY

Regulations on employment security:

- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Code of the Republic of Kazakhstan of Administrative Offences 2014 (version 22.07.2018)
- Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI (version 27.04.2018)

Written Employment Particulars

Labour Code has provisions with regard to the written employment contracts. Labour contracts, in accordance with Kazakh law, may be concluded for an indefinite term or fixed term. An employment contract can be concluded with a citizen who has reached the age of 16 years. With the written consent of a parent, guardian or adoptive parent, employment contract may be concluded with citizens aged:

- A. 15 years if they receive secondary education in general education institution;
- B. 14 years if children perform work during out-of-school hours and the work is not harmful to health and does not disrupt the study process;
- C. under 14 years for participation in creating and performing workers (cinema, theatre, circuses) without detriment to the health and moral development of children and provided that their education is not affected.

To conclude an employment contract, following documents are required:

1. identity card or passport (birth certificate for persons under 16 years);
2. residence permits or certificates of stateless person or refugee status;
3. educational qualification and training credentials;
4. work experience documents;
5. preliminary medical examination document (if necessary).

Employment contracts are concluded in written form in at least two copies and are signed by both the parties. Employee is provided his/her copy of employment contract, confirming the receipt in writing. Any changes in the employment contract including transfer to a different job are done in writing and after agreement between the parties.

An employment contract must contain among others, the following details:

1. full details of the parties;
2. job title and job description;
3. workplace details;
4. term of the employment contract (fixed or indefinite term) and date of conclusion of employment contract;
5. employment commencement date;
6. working time and rest time regime;
7. amount and other conditions of labour compensation;
8. description of working conditions especially when work is heavy or hazardous;
9. rights and obligations of contracting parties;
10. procedure for amending or terminating the employment contract.

Hiring of a worker is based on internal rules of an enterprise. A worker may start work only once the employment contract is concluded. If there is the absence of the employment contract due to the fault of the employer, employer is liable under the laws of the Republic of Kazakhstan. It is punished by the fine ranging from 30 to 150 monthly calculation indices. Since January 2018, the monthly calculation index is 2,405 tenge. If the offence is repeated within a year after administrative penalty, the penalty is increased to 200 monthly calculation indices. In the case of minors, the administrative penalty is 300 monthly calculation indices and suspension of the licence. Moreover, absence of an employment contract does not mean the loss of rights of a worker in the case of contract termination. Employment of a worker can be proved from, among others, employment history, salary statements, information from the State Social Insurance Fund for social deductions made, employment contract with mark of employer on the date and grounds for its termination.

Sources: §1, 28, 30-33 of the Labour Code; §86 of the Code of the Republic of Kazakhstan of Administrative Offences; §8 of the Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI

Fixed Term Contracts

As a rule, the minimum length of a single fixed term contract is 1 year. At the expiration of the labour contract, parties have the right to extend it for an indefinite or definite term of not less than one year. The number of renewals allowed for the fixed term contracts are two. If a worker keeps working on the expiry of a fixed term contract, it is deemed to be contract for indefinite duration. In small businesses, labour contracts may be concluded for a certain period without limitation. Moreover, for retiree having high professional and qualification level, taking into account its performance, an employment contract may be renewed annually without restriction. Hiring of fixed term contract workers for tasks of permanent nature is not allowed.

Labour Code allows to conclude fixed term contract in following cases:

- particular job;
- execution of the duties of the absent employee;
- seasonal work;
- work of a foreigner.

Sources: §30 of the Labour Code

Probation Period

Probation period is established by the labour contract to verify the conformity of qualifications for work. It starts from the beginning of the employment contract and is included in the employee's length of service. The probation period is suspended for the period, when the employee is actually absent from work.

The maximum term of the probation period is 3 months. For the heads of the organizations and their deputies, chief accountants and their deputies, heads of branches, representative organizations the probation period may be extended to six months.

If the probation period has expired and neither of the parties has not notified about the termination of the employment contract, the employee is considered to have passed the probationary period. If the employer is not satisfied with worker's performance during probation period, he may terminate the employment contract stating the reasons for such termination.

Sources: §36 and 37 of the Labour Code

Notice Requirement

In accordance with the Labour Code, grounds for termination of the employment contract are:

- the parties' agreement;
- expiration of the employment contract;
- employer's initiative;
- employee's initiative;
- transfer of an employee to work for another employer;
- owing to circumstances beyond parties' control;
- refusal of the employee to continue working;
- transfer of an employee to an elected job;
- breach of the conditions of the contract.

For terminating a contract by the parties' agreement, one party must notify the other. The second party must respond to the proposal in writing within three working days. Date of termination of the employment contract is established by the agreement.

An employment contract may be terminated by the employer in many situations, some of which include:

1. liquidation of a legal entity employer or termination of the activities of an individual employer;
2. reduction in staff numbers or positions;
3. reducing the volume of production, works and services, which caused deterioration of the economic status of the employer;
4. unfitness of the employee for the position held or work performed as a consequence of inadequate qualifications;
5. unfitness of the employee for the position held or work performed as a consequence of health reasons hampering continued performance of the given work;
6. negative result of work performed during a probationary period;
7. absence of the employee from work without valid reason for three or more hours per working day;

8. failure of a worker in a test checking the knowledge on occupational safety and health or industrial safety of the employee responsible for security and protection of workers engaged in production activities.

Employment contract is terminated after serving a written notice stating the reasons for termination of a contract. The employer must inform the employee in writing at least one month ahead about the liquidation of the organization or staff reduction (redundancy) or in the case of individual dismissal unless the employment contract or the collective agreement provide for longer notice period. With the written consent of the employee, termination of employment is allowed before the expiry of the notice period by paying compensation in lieu of notice period (full or partial term). The parties may agree to give the employer unilateral right to terminate the contract without serving any notice against a compensation, the size of which is determined under the employment contract.

In the case of dismissal in connection with the decrease of production volume, worker is informed at least 15 working days beforehand. Termination of contract in such case is possible once the following conditions are met:

- 1) closure of structural unit;
- 2) lack of an option to transfer worker to another suitable job;
- 3) a written notice of at least one month to employee representative indicating the reasons for termination of employment contract.

Termination of a worker who has less than two years in reaching the retirement age on the ground of reduction in staff numbers/positions or as a consequence of inadequate qualifications to perform work must be authorised by ad-hoc joint employer-employee commission created for the purpose. Termination of a worker on leave due to temporary incapacity is not allowed except in the case of liquidation of employer, when the violation of labour duties by a unit head or organization head caused a material damage to the employer, and absence of a worker for more than two months on account of temporary disability. Termination of employment contract on the ground of reduction in staff or production volume (redundancy) is not permitted for pregnant women (with a certificate of pregnancy), women with children under three years, single parents raising a child under 14 (limit is raised to 18 for disabled child).

The employee may leave job by his initiative in a month after written notification. The employment contract is allowed to establish a longer term. The employer may agree with discharge earlier.

The worker has the right to notify the employer in writing about the breach of conditions of the employment contract. If violation of the terms of employment continues after seven days of complaint submission, the employee may terminate the contract by written notice to the employer within three working days.

Sources: §49, 50, 52, 53 and 56 of the Labour Code

Severance Pay

The employer makes compensation payments due to loss of work in amount of one month's average wage in the following cases:

- liquidation of the organization;
- staff reduction;
- breach of the conditions of the contract by employer.

In the case of the decrease of production volume, compensation is in amount of two month's average wage. The severance payment is not dependent on the length of service. The Labour Code mainly provides severance payments in the case of economic dismissals/redundancy.

By agreement with the employee, the employment contract may provide for the right of the employer to terminate the employment contract without notification, but with compensation payment. Its size is determined by the labour contract.

If the worker achieves retirement age, he will get compensation in the amount by the contract, collective agreements, acts of the employer. At the discharge of the seasonal worker, he may get compensation in the amount of two-week average wage in the case of the liquidation of the organization or staff reduction.

Upon termination of the employment contract, a worker who has not used or not fully used the annual paid leave will get compensatory payment for it.

Other rates of payments may be established by collective bargaining agreement and employment contracts.

Sources: §53, 96 and 131 of the Labour Code

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)
Recommendation 165: Workers with Family Responsibilities (1981)

Kazakhstan has ratified the Convention 156 only.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Law of the Republic of Kazakhstan 'About state allowances to families with children' 28.06.2005 № 63-III (version 02.07.2018)
- Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II (version 02.07.2018)
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About some measures to implement the Law of the Republic of Kazakhstan 'About state allowances to families with children' 05.05.2015 № 319 (version 24.11.2017)
- Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI (version 27.04.2018)

Paternity Leave

Kazakh legislation does not provide for special paternity leave. Nevertheless, the Labour Code establishes certain guarantees to fathers on the birth of a child. The employer is obliged on the basis of a written application to provide an employee with leave without pay in case of birth of a child - up to five days.

Sources: §97 of the Labour Code.

Parental Leave

The unpaid parental leave is available for parents until a child is three years old. The parental leave is available for:

- mother or father - at the choice of parents;
- single parents;
- other relatives bringing up a child without parents;
- guardian;
- adoptive parent.

The employee can get the parental leave in whole or in parts specifying this in written application. In the case of return to work before the expiry of the parental leave, the employee must notify the employer at least one month before the start of working. Employment of a worker is secure during this unpaid until the child reaches the age of three years.

During this leave parents are eligible for a monthly social benefit to care for the child up to the age of one year. On the birth of two or more children, monthly social benefit is fixed for each child. It is assigned from child's date of birth. Monthly social benefit is determined by multiplying the average monthly income by the income replacement index of 0.4. The maximum amount of benefit cannot exceed 40% of ten-times the minimum wage. Minimum rate is established by law.

Also, there is allowance to care for the child up to the age of one year for those, who do not take part in the compulsory social insurance system. At the birth of two or more children, allowance is fixed for each child. Rates of allowance are:

- for the first child - 5.76 monthly calculation indices;
- the second child - 6.81 monthly calculation indices;
- for the third child - 7.85 monthly calculation indices;
- for the fourth and subsequent children - 8.90 monthly calculation indices.

Since January 2018, the monthly calculation index is 2,405 tenge.

Sources: §99 and 100 of the Labour Code; §1, 4, 8, 10 of the Law of the Republic of Kazakhstan 'About state allowances to families with children' 28.06.2005 № 63-III; §4, 20, 23-2 of the Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II; § 8 of the Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About some measures to implement the Law of the Republic of Kazakhstan 'About state allowances to families with children' 05.05.2015 № 319

Flexible Work Option for Parents / Work-Life Balance

The employer is obliged to establish a part-time job at the request of a pregnant worker or one of the parents with a child under the age of three. Part-time work is the work which is less than the normal duration (40 hours per week). It can either be in the form of reduction in the daily working hours or reduction in the number of working days in a week or a simultaneous reduction in the daily hours of work and number of working days in a week. Working as part-time does not lead to reduction in the length of paid annual leave, calculation of seniority or other rights at work established by the Labour Code, employment contract or collective agreements.

The employer is not entitled to involve at night the following employees (without their written consent):

- women with children aged up to seven years, and others, with children aged up to seven years without a mother;
- workers with disabled children up to the age of sixteen.

Workers with children under the age of three, children with disabilities (by the medical report) are entitled to refuse from the business trip.

Working women with children under the age of one and a half years, fathers (adoptive parents) with children under the age of one and a half years without a mother, have right to get nursing breaks not less than every three hours of the following duration:

- 1) having one child - each break of at least thirty minutes;
- 2) having two or more children - each break of at least one hour.

Under the application of women, nursing breaks are joined to a break for rest and food, or transferred to the beginning or end of the working day. Nursing breaks are considered to be parts of working time and paid in the amount of average earnings.

Labour Code also provides for flexi-time for the purpose of combining socio-domestic and personal requirements of employees with the interests of production.

Sources: §70, 74, 76, 82 and 127 of the Labour Code

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Kazakhstan has ratified the Convention 183 only.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Code of the Republic of Kazakhstan about health nation and health care system 2009 (version 04.07.2018)
- Law of the Republic of Kazakhstan 'About state allowances to families with children' 28.06.2005 № 63-III (version 02.07.2018)
- Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II (version 02.07.2018)
- Law of the Republic of Kazakhstan 'About social protection of citizens affected by the nuclear tests at Semipalatinsk nuclear testing facilities' 18.12.1992 № 1787-XII (version 02.07.2018)
- Resolutions of the Government of the Republic of Kazakhstan 'About approval of the list of guaranteed free medical care' 15.12.2009 № 2136 (version 27.01.2014)
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the list of works, which prohibits the employment of workers under the age of eighteen, the marginal rates carry and move weights for employees, who have not reached the age of eighteen, and a list of jobs for which prohibited the employment of women, the marginal rates of lifting and manual handling of loads by women' 08.12.2015 № 944
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About some measures to implement the Law of the Republic of Kazakhstan 'About state allowances to families with children' 05.05.2015 № 319 (version 24.11.2017)

Free Medical Care

Guaranteed volume of free medical care includes preventive, diagnostic and therapeutic medical services, according to the list approved by the Government of the Republic of Kazakhstan. The guaranteed volume of free medical care consists of:

- outpatient care;
- inpatient care;
- restorative treatment and medical rehabilitation;
- palliative care and nursing care;
- transportation.

For example, Resolutions of the Government of the Republic of Kazakhstan 'About approval of the list of guaranteed free medical care' guarantees the patronage, medical and genetic counselling of pregnant women.

Medical and consultative, ante and postnatal care of pregnant women is provided within the guaranteed volume of free medical care. At the same time, women in the period of up to twelve weeks of pregnancy are required to register at medical institution.

Sources: §34, 90 and 97 of the Code of the Republic of Kazakhstan about health nation and health care system; Resolutions of the Government of the Republic of Kazakhstan 'About approval of the list of guaranteed free medical care' 15.12.2009 № 2136

No Harmful Work

Law prohibits the employment of pregnant and nursing women in work injurious to their health. Night and overtime work, working at weekends and public holidays is prohibited for pregnant workers. Recall from annual paid leave for pregnant workers is also forbidden. Moreover, pregnant women are entitled to refuse from the business trip. For pregnant women with gestational age of twelve or more weeks, shift work is prohibited.

Employment is not permitted for women on heavy work, jobs with harmful or dangerous working conditions, in accordance with list approved by the Order of the Minister of Health and Social Development of the Republic of Kazakhstan.

Pregnant women may be transferred to another job while maintaining the previous average earnings. Before employer arranges other safe job for pregnant women, they must be released from work while maintaining and preserving their previous average earnings. In the case of refusal of a pregnant woman to be transferred to another (safe) job, she must be released from the work without pay.

The employer is obliged to establish a part-time job at the request of a pregnant worker. Also using of summary recording of working hours for pregnant women is not allowed, if the duration of the working day exceeds eight hours.

Sources: §26, 44, 70, 76, 85, 95, 127 and 135 of the Labour Code; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the list of works, which prohibits the employment of workers under the age of eighteen, the marginal rates carry and move weights for employees, who have not reached the age of eighteen, and a list of jobs for which prohibited the employment of women, the marginal rates of lifting and manual handling of loads by women' 08.12.2015 № 944

Maternity Leave

Maternity leave is granted from the date specified in the medical certificate. If a woman applies for the certificate during pregnancy, maternity leave is calculated in total and is provided completely regardless of the number of days actually used before the birth and the duration of work for that employer.

Duration of the maternity leave:

- normal birth - 70 calendar days antenatal and 56 calendar days postnatal;
- complicated birth or birth of two or more children - 70 calendar days antenatal and 70 calendar days postnatal;

- in territories affected by nuclear tests, normal births - 91 calendar days antenatal and 79 calendar days (complicated births or birth of two or more children - 93 calendar days) postnatal;
- childbirth at the period of 22 to 29 weeks of pregnancy & child's weight - 500 grams or more & child lives more than 7 days - 70 calendar days postnatal;
- childbirth at the period of 22 to 29 weeks of pregnancy & birth of a dead foetus or death of child before 7 days of life (child's weight - 500 grams or more) - 56 calendar days postnatal;
- in territories affected by nuclear tests, in case of childbirth at a period of 22 to 29 weeks of pregnancy & child's weight - 500 grams or more & child lives more than 7 days - 93 calendar days postnatal;
- in territories exposed to nuclear tests, in the case of childbirth at the period of 22 to 29 weeks of pregnancy & birth of a dead foetus or death of child before 7 days of life (child's weight - 500 grams or more) - 79 calendar days postnatal.

One of the adoptive parents is also eligible for the adoption leave for the period from the date of adoption and prior to the expiry of 56 calendar days after the birth of the adopted child.

Sources: §87 and 99 of the Labour Code; §14 of the Law of the Republic of Kazakhstan 'About social protection of citizens affected by the nuclear tests at Semipalatinsk nuclear testing facilities'

Income

Social benefit is paid during the period, which is specified in the sheet of temporary disability. It is calculated through a complex formula: multiplying the average monthly income by the appropriate coefficient of disability days. The employer will pay for maternity leave with the average wage (minus the amount of monthly insurance allowance), if it is established by contract, collective agreement, the employer's act/internal regulations.

Also, there is one-time state allowance, fixed and paid by the birth of a child. The rates of the allowance for the birth:

- for the first, second, third child - 38.0 monthly calculation indices ($38.0 \times 2,405 = 91,390$ tenge);
- for the fourth and more child - 63.0 monthly calculation indices.

Since January 2018, the monthly calculation index is 2,405 tenge.

Sources: §99 of the Labour Code; §23-1 of the Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II; §1, 4, 7 and 10 of the Law of the Republic of Kazakhstan 'About state allowances to families with children' 28.06.2005 № 63-III; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About some measures to implement the Law of the Republic of Kazakhstan 'About state allowances to families with children' 05.05.2015 № 319

Protection from Dismissals

Employment of a worker is secure during the term of maternity leave. It is prohibited to terminate the employment contract in the following cases:

- 1) denial of the employee to transfer to another location with the employer;
- 2) employee's refusal to continue work due to changes in working conditions;
- 3) denial of the employee to a temporary transfer to another job for health reasons.

Termination of the employment contract with pregnant woman because of the decrease of production volume or the staff reduction is not allowed.

If the fixed term contract expires after the pregnancy of twelve weeks or more, worker may submit a written application for an extension of the employment contract (except in the case of replacement of a temporarily absent employee). Thereafter, employer must extend the term of the employment contract by the end of the parental leave.

Sources: §51, 54 and 58 of the Labour Code

Right to Return to Same Position

The employee retains the job (position) during paid maternity and unpaid parental leave. In the case of return to work before the expiry of the parental leave, the employee must notify the employer no later than one month before the start of work.

Sources: §100 of the Labour Code

Breastfeeding

Working women with children under the age of one and a half years and fathers (adoptive parents) with children under the age of one and a half years without a mother have the right to get nursing breaks of the following duration (after every three hours):

- 1) each break of at least 30 minutes for one child;
- 2) each break of at least 60 minutes for two or more children.

Under the application of women or parent responsible for the child, nursing breaks are joined to a break for rest and food, or transferred to the beginning or end of the working day. Nursing breaks are paid and are part of the time worked.

Sources: §82 of the Labour Code

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Kazakhstan has ratified both the Conventions 81 & 155.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Entrepreneurial Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the Rules of development, approval and review of the safety and labour protection by the employer' 30.11.2015 № 927
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of forms for registration materials of the investigation of accidents at work' 28.12.2015 № 1055
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of rules and terms of training, coaching and knowledge tests on the safety and security of employees' 25.12.2015 № 1019
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the forms of the state labour inspector acts' 30.11.2015 № 904

Employer Cares

The employer is obligated to ensure protection to workers' health and safety. The Labour Code and departmental orders make it more exact, for example:

- approval and revision of the regulations on safety and labour protection;
- organization of medical examinations;
- social insurance of workers against accidents at work;
- investigation and registration of accidents at work;
- prevention lifting and moving heavy objects by women or minors, exceeding the limits set under laws;
- organization of training, instruction, testing knowledge of OSH for workers;
- prevention and replacement of production equipment and processes for the purpose of making it safer;
- other cases by the Labour Code.

While employees have the right to a workplace equipped with the safety requirements and labour protection, he/she must comply with the rules and regulations of health and safety at workplace. Employee must immediately inform the employer of work-related injuries, damages to workers' health, symptoms of occupational diseases as well as situations which pose a threat to human life and health.

Sources: §181 and 182 of the Labour Code; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the Rules of development, approval and review of the safety and labour protection by the employer' 30.11.2015 № 927; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of forms for registration materials of the investigation of accidents at work' 28.12.2015 № 1055

Free Protection

Employees have right to be provided with the means of individual and collective defence, in line with the OSH requirements and as provided under employment contract and collective agreement. Employer has a duty to create the necessary sanitary and hygienic conditions for workers, to ensure the delivery and repair of special clothing and footwear for workers, to supply them with means of preventive treatment, detergents and disinfectants, a first aid kit, milk, medicinal and healthy food, personal and collective protective equipment in accordance with the norms established by the Government of the Republic of Kazakhstan.

Sources: §181 and 182 of the Labour Code; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 28.12.2015 № 1056 'About approval of norms for granting workers milk or equivalent foodstuffs, nutritional care'; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 08.12.2015 № 943 'About approval of rules granting special clothing and other personal protective equipment to employees of organizations of various types of economic activity'

Training

The employer must conduct briefings on occupational safety and organize training on safe methods and techniques of work and first aid, as well as ensure medical examination for workers. Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of rules and terms of training, coaching and knowledge tests on the safety and security of employees' establishes details of it.

Sources: §182 of the Labour Code; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of rules and terms of training, coaching and knowledge tests on the safety and security of employees' 25.12.2015 № 1019

Labour Inspection System

State control over the observance of labour legislation of the Republic of Kazakhstan is carried out by state labour inspectors. This system consists of the Head State Inspector of Labour of the Republic of Kazakhstan, chief state inspectors (including in regions) and state inspectors. State labour inspectors must comply with legislation and rights of employers. Control is regulated by the Entrepreneurial Code and special departmental documents, such as the Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the forms of the state labour inspector acts'. State labour inspectors have the right to:

- give an obligatory order to the employer for elimination of violations of the labour law;
- consider cases on administrative offenses;
- investigate industrial accidents;
- check the observance of labour legislation at the organization.

Kazakh labour law establishes the principle of central and independent labour inspection system in line with the requirements of Labour Inspection Convention, 1947 (No. 81), that was ratified in 2001.

Sources: §191 of the Labour Code; §140 of the Entrepreneurial Code; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the forms of the state labour inspector acts' 30.11.2015 № 904

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Kazakhstan has ratified the Convention 102 only.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Code of the Republic of Kazakhstan about health nation and health care system 2009 (version 04.07.2018)
- Civil Code of the Republic of Kazakhstan (special part) 1999 (version 04.07.2018)
- Law of the Republic of Kazakhstan 'About minimum social standards and guarantees' 19.05.2015 № 314-V (version 05.07.2018)
- Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI (version 27.04.2018)
- Law of the Republic of Kazakhstan 'About compulsory insurance of employee against accidents while performing of labour (official) duties' 07.02.2005 № 30-III (version 24.05.2018)
- Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II (version 02.07.2018)
- Resolutions of the Government of the Republic of Kazakhstan 'About determination of rates of social benefits for temporary disability' 28.12.2015 № 1103
- Resolutions of the Government of the Republic of Kazakhstan 'About approval of the list of guaranteed free medical care' 15.12.2009 № 2136 (version 27.01.2014)
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the Rules of appointment and payment of social benefits for temporary disability' 30.11.2015 № 907
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the list of illness with term of temporary disability for more than two months' 28.12.2015 № 1033
- Resolution of Board of Agency of the Republic of Kazakhstan on Regulation and Supervision of Financial Market and Financial Organizations 'About approval of normative legal acts regulating the organization and implementation of activities on compulsory insurance of employee from accidents during execution of labour (service) duties' 01.03.2010 № 28 (version 30.05.2016)

Income/Paid Sick Leave

The employers are obliged to pay workers a social benefit for temporary disability, based on a medical certificate. Social benefits for temporary disability is paid for the whole period of temporary disability until the day of rehabilitation (or the establishment of invalidity). It is not paid in following cases:

- temporary disability as a result of industrial injury in the commission of a criminal offense (by a court judgment);
- compulsory treatment (by a court decision);
- arrest or forensic medical examination;
- temporary disability as a result of industrial injury in the commission of alcohol, drugs and toxicological matters;
- during annual paid leave.

Employers have the right to establish additional payments to employees during temporary disability.

The amount of social benefit for temporary disability is determined by the formula: multiplying the average daily wage to working days of temporary disability. As a rule, the rate of benefit in a month shall not exceed 15-times the monthly calculation index. The current monthly calculation index is 2,405 tenge. There are some exceptions. For example, social benefit in connection with the industrial injury or occupational diseases is 100% of the average wage.

Sources: §133 of the Labour Code; §8 of the Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI; Resolutions of the Government of the Republic of Kazakhstan 'About determination of rates of social benefits for temporary disability' 28.12.2015 № 1103; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the Rules of appointment and payment of social benefits for temporary disability' 30.11.2015 № 907

Free Medical Care

Guaranteed volume of free medical care includes preventive, diagnostic and therapeutic medical services, according to the list approved by the Government of the Republic of Kazakhstan. The guaranteed volume of free medical care consists of:

- outpatient care;
- inpatient care;
- restorative treatment and medical rehabilitation;
- palliative care and nursing care;
- transportation services.

Resolutions of the Government of the Republic of Kazakhstan 'About approval of the list of guaranteed free medical care' lays out the specifics of free medical care. Guaranteed volume of free medical care, access to health services to the population are minimal social standards of public health.

Sources: §34 and 90 of the Code of the Republic of Kazakhstan about health nation and health care system, Law of the Republic of Kazakhstan 'About minimum social standards and guarantees' 19.05.2015 № 314-V; Resolutions of the Government of the Republic of Kazakhstan 'About approval of the list of guaranteed free medical care' 15.12.2009 № 2136

Job Security

As a rule, it is not allowed to terminate the labour contract by the employer's initiative during the period of temporary disability. Also, the employer cannot impose a disciplinary sanction on an employee during temporary disability. Nevertheless, the employment contract may be terminated in the case of absence of employee at work

more than two consecutive months due to temporary disability, except maternity leave and disease from the List of illness with longer period of disability.

Sources: §52-54 and 65 of the Labour Code; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the List of illness with term of temporary disability for more than two months' 28.12.2015 № 1033

Disability/Work Injury Benefit

The employer is obliged to insure employees against accidents at work. There is treaty annuity insurance. Insured event is an accident, that happened with the employee in the performance of duties, as a result of harmful or hazardous production factor. It entails work injury, sudden health deterioration or poisoning of worker, which makes necessary to establish degree of occupational disability, disease or death.

The rate of average monthly earnings for the calculation of reimbursable lost income is calculated by rules of Civil Code. It means that amount to be reimbursed for lost income is defined as a percentage of average monthly earnings before injury or disability. Average monthly earnings for this purpose does not exceed ten-fold the minimum wage. It is necessary to subtract disability social benefits of the State Social Insurance Fund for calculating insurance payment against accidents at work.

There are monthly insurance payments from the insurance company in case of disability of less than one year. Also, there are annuity payments by the insurance company in case of loss of ability to work for one year or more. In this case, the procedure for calculating the annuity payments is determined by the legal act of the National Bank of the Republic of Kazakhstan.

Social benefits in case of disablement is assigned for the whole period of disability. In case of change of disability degree, social benefit is paid in the amount corresponding to the newly degree of disability. Monthly payment is calculated by the complex formula, including monthly average income, minimum wage and income replacement rates, disability and years of participation.

The work injury benefits are mainly an employer's liability (through a private carrier) and state provision (social assistance system). Employer has to pay total cost of annual insurance premiums to the insurance firm or provide benefits directly to the insured workers. The State social assistance system is available in the event of permanent disability and survivors' benefits (in the case of worker's death).

In the event of temporary disability, 100% of the average earnings is paid from the first day of disability until recovery or award of permanent disability pension. A flat rate monthly benefit is paid by the state social assistance system according to the assessed degree and prescribed category of disability. Collective agreements may provide for lump sum grants by the employer for different disability groups. The social assistance

system also provides for a flat rate monthly allowance according to the family size and whether any family members have a disability. There is also provision for funeral benefit if death was a result of work injury or an occupational disease.

Sources: §23, 133 of the Labour Code; §1, 11, 19 and 23 of the Law of the Republic of Kazakhstan 'About compulsory insurance of employee against accidents while performing of labour (official) duties' 07.02.2005 № 30-III; §938 of the Civil Code of the Republic of Kazakhstan (special part); §21 of the Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II; Resolution of Board of Agency of the Republic of Kazakhstan on Regulation and Supervision of Financial Market and Financial Organizations 01.03.2010 № 28; Resolutions of the Government of the Republic of Kazakhstan 28.12.2015 № 1103; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 30.11.2015 № 907

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Kazakhstan has ratified the Conventions 102 & 168 only.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Law of the Republic of Kazakhstan 'About social protection of disabled persons in the Republic of Kazakhstan' 13.04.2005 № 39-III (version 02.07.2018)
- Law of the Republic of Kazakhstan 'About state social allowance for disability, loss of the breadwinner and age in the Republic of Kazakhstan' 16.06.1997 № 126-I (version 06.04.2016)
- Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II (version 02.07.2018)
- Law of the Republic of Kazakhstan 'About employment of the population' 06.04.2016 № 482-V (version 04.07.2018)
- Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI (version 27.04.2018)
- Law of the Republic of Kazakhstan 'About pension provision in the Republic of Kazakhstan' 21.06.2013 № 105-V (version 02.07.2018)
- Law of the Republic of Kazakhstan 'About social protection of citizens affected by the nuclear tests at Semipalatinsk nuclear testing facilities' 18.12.1992 № 1787-XII (version 02.07.2018)
- Law of the Republic of Kazakhstan 'About minimum social standards and guarantees' 19.05.2015 № 314-V (version 05.07.2018)
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of rules of state basic pension payments from the budget, as well as the purpose and implementation of pension payments, the state basic social allowances for disability, loss of the breadwinner and age, state special benefits from the authorized organization' 14.04.2015 № 223 (version 12.01.2016)
- Order of the acting Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of Rules of use of pension benefits by age, seniority and the state social benefits for disability, loss of the breadwinner by medical and social institutions (organizations)' 24.02.2016 № 139
- Order of the Minister of Labour and Social Protection of Population of the Republic of Kazakhstan 26.06.2018 № 266

Pension Rights

Pension is a sum total of monthly state basic pension payment and (or) pension benefits by age and (or) pension benefits for length of service and (or) from the unified accumulative pension fund and (or) voluntary pension saving fund.

Men, who have reached the age of 63, and women over the age of 58 years have a right to get a retirement pension. By 2027, the retirement age will be gradually raised for women to 63 years.

The early pension depends on such factors, as age, gender, area of living, length of service, number and ages of children.

The Law 'About pension provision in the Republic of Kazakhstan' establishes periods, that is taken into consideration for calculating necessary length of service for getting pension (working by labour contract, military service, entrepreneurial activity, etc.). Calculation of pension by age is made at the rate of 60% of average monthly income (for previous 3 years of working). Income for the calculation of pension by age cannot exceed the rate of 41-times the monthly calculation index (The current monthly calculation index in 2018 is 2,405 tenge).

The current rate of minimum monthly pension is 33,745 tenge. The minimum pension is the minimum social standards in the field of social security.

Since July 2018, the basic pension is calculated on the basis of the length of participation in the pension system and the rate of living wage. If the length of employment is up to ten years (inclusive), the basic pension is 54% of the living wage. For each year of employment above ten years, the basic pension will increase by 2%. If the working experience is 33 or more years, the rate of the basic pension will be 100% of the living wage. These changes apply to already retired persons.

The length of participation in the pension system consists of:

- working experience before 01.01.1998;
- pension contributions after 01.01.1998;
- other periods (for example, child care for up to three years).

Also, Kazakh legislation provides retiree by the monthly age allowance. The age allowance is granted to citizens in the absence of the right to pension benefits on reaching retirement age. It is paid in the amount 0.52 of the living wage. The current living wage is 28,284 tenge.

Since 2018 only the monthly schedule of pension payments is provided, instead of the annual and quarterly.

Sources: §17 and 18 of the Law of the Republic of Kazakhstan 'About state social allowance for disability, loss of the breadwinner and age in the Republic of Kazakhstan' 16.06.1997 № 126-I; §1, 4, 11, 13, 15 and 16 of the Law of the Republic of Kazakhstan 'About pension provision in the Republic of Kazakhstan' 21.06.2013 № 105-V; § 8 of the Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI; Law of the Republic of Kazakhstan 'About social protection of citizens affected by the nuclear tests at Semipalatinsk nuclear testing facilities' 18.12.1992 № 1787-XII; §16 and 20 of the Law of the Republic of Kazakhstan 'About minimum social standards and guarantees' 19.05.2015 № 314-V; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 14.04.2015 № 223; Order of the acting Minister of Health and Social Development of the Republic of Kazakhstan 24.02.2016 № 139

Dependents' / Survivors' Benefit

Kazakh legislation provides family members of the deceased breadwinner the right to survivors' benefit:

1. children (adopted children) under 18 years of age (disabled - no age limit);
2. brothers, sisters and grandchildren under 18 years of age (disabled - no age limit), if they do not have employable parents or alimony;
3. the age limit is raised for children to 23 years in the case of full-time students;
4. parent, spouse, grandfather, grandmother, brother or sister (regardless of age and disability), if he (she) is taking care of children, brothers, sisters or grandchildren up to 3 years old of the deceased breadwinner.

One insurance survivors' benefit is assigned for all dependent family members. Upon written request of dependent family member, his/her share of social benefit will be allocated and paid him separately.

The survivors' benefit is calculated through a complex formula, included average monthly income, minimum wage, income replacement rates, number of dependents and length of participation.

Dependent family members of the deceased breadwinner have a right to get survivors' allowance. The list of them is established by the Law 'About state social allowance for disability, loss of the breadwinner and age in the Republic of Kazakhstan'. The members of the deceased breadwinner of the family are recognized his dependents, if they were on its full maintenance, or recipients of its assistance, which was for them a permanent and main source of livelihood. Allowance for loss of breadwinner is set for period, during which the member of the family of the deceased is considered to be disabled. The rate of survivors' allowance depends on coefficients and living wage. The current living wage is 22,859 tenge.

Sources: §22 of the Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II; §13-16 of the Law of the Republic of Kazakhstan 'About state social allowance for disability, loss of the breadwinner and age in the Republic of Kazakhstan' 16.06.1997 № 126-I; § 8 of the Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 14.04.2015 № 223; Order of the acting Minister of Health and Social Development of the Republic of Kazakhstan 24.02.2016 № 139

Unemployment Benefits

A person is considered unemployed who is out of work, looking for a job and ready to start work. In order to avail unemployment benefits, he/she must register with the employment service in order to find a proper job.

The following groups of citizens are recognized employed:

- working under an employment contract;

- self-employed;
- elected to the paid position;
- serving in the army, law enforcement and special state bodies of the Republic of Kazakhstan.

Social benefits in the event of loss of work is assigned from the date of registration as unemployed. It is calculated through a complex formula, included average monthly income, income replacement rates and length of service providing covered period rate.

Unemployment benefits are paid for one to six months. The covered period rate is 0.7 for six to eleven months of coverage and 1 for sixty or more months of coverage.

In 2018, it is planned to reform targeted social assistance to low-income families. Unconditional financial assistance will be provided to families, whose members, due to objective circumstances, do not have the opportunity to work. Each family member may get such social assistance in the amount of 60% of the subsistence minimum.

Sources: §21 and 23 of the Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II; §1, 4, 12-14 of the Law of the Republic of Kazakhstan 'About employment of the population' 06.04.2016 № 482-V

Invalidity Benefit

The invalidity benefit is paid monthly to citizens recognized as disabled (I, II or III disability group). The recognition of a disabled citizen and establishment of disability is done by federal medical and social protection agencies. The invalidity benefit is set regardless of the employment, but it depends on the cause, date of establishment and group of disability. A person may be assessed with a Group I (incapacity for any kind of work), Group II (incapacity for usual work), or Group III (capacity for work) disability.

The rates of the social invalidity benefit are established by the Law 'About state social allowance for disability, loss of the breadwinner and age in the Republic of Kazakhstan' and depends on coefficients and living wage. The current living wage is 22,859 tenge.

Other measures of social protection of disabled people are established by the Law 'About social protection of disabled persons in the Republic of Kazakhstan' and departmental acts: rehabilitation, medical care, social amenities, etc. There is a provision for a flat rate monthly benefit (state social assistance) according to assessed degree and prescribed category of disability. Under social insurance system, a monthly benefit is paid based on the difference between average monthly earnings in last 24 months and 80% of the monthly minimum wage multiplied by the income replacement rate, the loss of working capacity rate and covered period rate. The loss of working capacity rate is 0.7 for a loss of working capacity of 80% to 100% (Group I disability); 0.5 for a working capacity loss of at least 60% but less than 80% (Group II disability); and 0.3 for a working capacity loss of at least 30% but less than 60% (Group III disability). Similarly, income replacement and covered period rates are provided under the law. The

invalidity benefit ceases once a worker reaches the retirement age and the benefit is replaced by old age pension.

Sources: §13 of the Law of the Republic of Kazakhstan 'About social protection of disabled persons in the Republic of Kazakhstan' 13.04.2005 № 39-III; §6, 8, 9, 11 and 12 of the Law of the Republic of Kazakhstan 'About state social allowance for disability, loss of the breadwinner and age in the Republic of Kazakhstan' 16.06.1997 № 126-I; § 21 of the Law of the Republic of Kazakhstan 'About compulsory social insurance' 25.04.2003 № 405-II; § 8 of the Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI; Order of the acting Minister of Health and Social Development of the Republic of Kazakhstan 24.02.2016 № 139; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 14.04.2015 № 223; Order of the Minister of Labour and Social Protection of Population of the Republic of Kazakhstan 26.06.2018 № 266

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Kazakhstan has ratified both Conventions 100 & 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Constitution of the Republic of Kazakhstan 1995
- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Code of the Republic of Kazakhstan of Administrative Offences 2014 (version 22.07.2018)
- Criminal Code of the Republic of Kazakhstan 2014 (version 09.04.2016)
- Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI (version 27.04.2018)
- Law of the Republic of Kazakhstan 'About social protection of disabled persons in the Republic of Kazakhstan' 13.04.2005 № 39-III (version 02.07.2018)
- Law of the Republic of Kazakhstan 'About trade unions' 27.06.2014 № 211-V (version 11.07.2017)
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the list of works, which prohibits the employment of workers under the age of eighteen, the marginal rates carry and move weights for employees, who have not reached the age of eighteen, and a list of jobs for which prohibited the employment of women, the marginal rates of lifting and manual handling of loads by women' 08.12.2015 № 944

Equal Pay

According to the Constitution, everyone has the right to receive the remuneration for work without any discrimination. The Labour Code has the prohibition of the discrimination. In accordance with the Labour Code, every employee has the right to 'equal payment for equal work without any discrimination'. The employer is liable on violation of these rules. In accordance with the Code of Administrative Offences, it entails the administrative fine at the rate from 30 to 120 monthly calculation indices. The current monthly calculation index is 2,405 tenge.

Sources: §24 of the Constitution; §6 of the Labour Code; §90 of the Code of Administrative Offences; §8 of the Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI

Sexual Harassment

According to the Constitution, everyone has the right to liberty. Individual dignity is protected by the state. Nothing can be a reason for its derogation. The Labour Code establishes prohibition of discrimination, including on grounds of gender. Kazakh legislation does not contain a definition of sexual harassment. The Criminal Code has the following types of sexual harassment: rape, sexual coercive actions, compulsion to the sexual coercive actions. Coercion of a person to sexual relationship or other actions of sexual nature by blackmail, threat of destruction, damaging or seizure of property or with the use of material or other dependence of injured person is punished by the fine in the amount of one thousand monthly calculation indices or correctional works in the same amount or restriction of liberty for the term of one year or imprisonment for the same term. Kazakh legislation establishes criminal liability for offenses against sexual

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inviolability by the Criminal Code, however, does not focus on sexual harassment in the workplace. Also, there are no employer's liability for failure to prevent sexual harassment in the workplace.

Sources: §16 and 17 of the Constitution, §4 and 6 of the Labour Code; §123 of the Criminal Code

Non-Discrimination

According to the Constitution, everyone has the right to receive the remuneration for work without any discrimination. Everyone shall be equal before the law and court. No one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances.

The Labour Code also prohibits discrimination. No one may be subjected to any discrimination in the exercise of labour rights on the basis of origin, social, official or property status, gender, race, nationality, language, attitude to religion, beliefs, place of residence, age or disability, as well as membership of public associations. This rule is specified for members of trade unions and disabled people by special laws.

Discrimination however does not include differences, exceptions, preferences and restrictions determined by requirements inherent in the nature of the work or dictated by the state's concern for people in need of increased social and legal protection. Persons who consider that they have been discriminated at the workplace, may apply to the court for redress.

Sources: §14 and 24 of the Constitution, §4 and 6 of the Labour Code; §5 of the Law of the Republic of Kazakhstan 'About social protection of disabled persons in the Republic of Kazakhstan' 13.04.2005 № 39-III; §7 of the Law of the Republic of Kazakhstan 'About trade unions' 27.06.2014 № 211-V

Equal Choice of Profession

Everyone has the right to freedom of labour, free choice of occupation and profession, according to the Constitution and the Labour Code.

But there is some exception because of health protection of women. Employment is not permitted for women in heavy work, jobs with harmful or dangerous working conditions, in accordance with list approved by the Order of the Minister of Health and Social Development of the Republic of Kazakhstan.

The employer is called to account for violation of that rules about equal choice of profession. In accordance with the Code of Administrative Offences, placement of information about vacancies containing discriminatory requirements in the workplace entails the administrative fine at the rate from 15 to 200 monthly calculation indices. The

current monthly calculation index is 2,405 tenge. According to the Criminal Code, unjustified refusal to conclude an employment contract or unwarranted termination of it on the grounds of pregnancy, the presence of children under three years, disability or minority is punished by fine up to 500 monthly calculation indices or correctional work, or public works up to 300 hours, or arrest to 90 days with disqualification up to year.

Sources: §24 of the Constitution; § 4-5 of the Labour Code; §90 of the Code of Administrative Offences; §8 of the Law of the Republic of Kazakhstan 'About republican budget for 2018 - 2020 years' 30.11.2017 № 113-VI; §152 of the of the Criminal Code; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 08.12.2015 № 944

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Kazakhstan has ratified both Conventions 138 & 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Order of the Minister of Health and Social Development of the Republic of Kazakhstan 'About approval of the list of works, which prohibits the employment of workers under the age of eighteen, the marginal rates carry and move weights for employees, who have not reached the age of eighteen, and a list of jobs for which prohibited the employment of women, the marginal rates of lifting and manual handling of loads by women' 08.12.2015 № 944

Minimum Age for Employment

As a rule, the minimum age to enter into employment is 16 years. The school leaving age is 17 years in Kazakhstan. The Constitution provides for compulsory secondary education. Nevertheless, there are some exceptions:

- citizens, who have reached fifteen years, in the cases they receive basic secondary, general secondary education in the organization of secondary education;
- pupils, who have reached the age of fourteen, for working in their free time, if it is not harmful for health and learning;
- persons under the age of fourteen for doing creative work (cinema, theatres, etc.), if it is not harmful for health, moral development and learning.

In that three cases, together with a minor, labour contract must be signed by one of his parents, guardian, trustee or adoptive parents.

Sources: §30 of the Constitution; §31 of the Labour Code

Minimum Age for Hazardous Work

Law prohibits the employment of minors to work injurious for health. The minimum age for hazardous work is 18 years. That is why, second job, work with material liability or summary recording of working time, overtime and night work are prohibited for persons under age of 18.

Work which is detrimental to moral development of minors is prohibited (gambling, work in nightclubs, production, transportation and sale of alcohol, tobacco, drugs, psychotropic substance, precursors).

Moreover, it is not allowed for workers under the age of eighteen years to carry or move weights under the limits laid down by the Order of the Minister of Health and Social Development of the Republic of Kazakhstan.

Sources: §26, 75-77 of the Labour Code; Order of the Minister of Health and Social Development of the Republic of Kazakhstan 08.12.2015 № 944

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Kazakhstan has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Constitution of the Republic of Kazakhstan 1995
- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Criminal Code of the Republic of Kazakhstan 2014 (version 10.01.2018)

Prohibition on Forced and Compulsory Labour

Forced labour is prohibited. Nevertheless, it is permitted only on a sentence of court or in a state of emergency or martial law. The forced labour is work under the threat of any penalty (violent impact) and for which a person has not offered himself voluntarily. By the Criminal Code, forced labour is the part of the legal term 'exploitation'. It is used as qualificatory circumstance of the crime, for example of kidnapping.

Sources: §24 of the Constitution; §7 of the Labour Code; § 3, 125 - 126, 128 and 135 of the Criminal Code

Freedom to Change Jobs and Right to Quit

Everyone has the right to freedom of labour, free choice of occupation and profession, according to the Constitution and the Labour Code. For terminating contract by the parties' agreement, one party must notify the other. The second party must answer during three working days in written form. Date of termination of the employment contract is established by the agreement.

The employee may leave job by his own initiative after serving one month written notification. The employment contract is allowed to establish a longer term. The employer may agree to an earlier discharge.

The worker has the right to notify in writing about the breach of conditions of the contract by the employer. If the notified breach continues after seven days of complaint, the employee may quit by written notice to the employer within the next three working days.

Sources: §24 of the Constitution; § 4, 5, 50 and 56 of the Labour Code

Inhumane Working Conditions

According to the Labour Code, normal working hours should not exceed 40 hours per week. Overtime work must not exceed two hours during the day, but in heavy, harmful, and dangerous work, the limit is reduced to one hour. The total duration of overtime work must not be more than 12 hours per month and 120 hours per year. In a six-day working week, maximum overtime work may be 12 hours (total duration of working hours - 52 hours).

Sources: §68 of the Labour Code

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize:
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Kazakhstan has ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Constitution of the Republic of Kazakhstan 1995
- Labour Code of the Republic of Kazakhstan 2015 (version 21.07.2018)
- Law of the Republic of Kazakhstan 'About trade unions' 27.06.2014 № 211-V (version 11.07.2017)

Freedom to Join and Form a Union

Freedom to join and form unions is established by the Constitution. Nevertheless, military, national security, law-enforcement and judges must abstain from trade unions.

Kazakh citizens living outside its territory may be members of Kazakh trade unions. Foreign citizens and stateless persons residing in the territory of the Republic of Kazakhstan may become members of Kazakh trade unions.

Trade unions in Kazakhstan have many rights, which include, among others, the following:

- 1) to represent and protect the rights and interests of its members;
- 2) to act as representatives of employees in relationships with state authorities, employers, associations of private businesses;
- 3) to bring an action in court to protect the rights and interests of its members;
- 4) to apply to the state authorities on the reform of legislation that infringes the rights and interests of trade union members;
- 5) to participate in pre-trial settlement of labour disputes;
- 6) to participate in resolution of individual and collective labour disputes;
- 7) to organise and carry out strikes, peaceful meetings, marches, pickets and demonstrations.

Sources: §23 of the Constitution; §3 and 16 of the Law of the Republic of Kazakhstan 'About trade unions' 27.06.2014 № 211-V

Freedom of Collective Bargaining

Representatives of workers and employers have rights to involve in collective bargaining in preparation, conclusion or modification of collective bargaining agreements and take the initiative for such negotiations. Representatives of parties, who have received an offer of the beginning of collective bargaining, are obliged to enter into negotiations within 10 calendar days of receipt of the proposal. Commission on collective bargaining is formed on parity basis.

The content and structure of the collective agreement are decided by parties, in accordance with the concluded general, sectoral and regional agreements. Collective agreements are concluded for a term agreed between the parties.

The Labour Code suggests the approximate list of questions for collective bargaining, for example:

- wages;
- allowances and compensations;
- training;
- rehabilitation and recreation of employees;
- working time and rest time.

As a rule, the collective agreement comes into force at its signing. If the collective agreement expires, it is considered to be extended until the conclusion of a new collective agreement (maximum - one year). At the same time, at least one of the parties should submit to sign a new collective agreement before the expiration the old agreement. The collective agreement may provide for its extension until the date of the conclusion of a new collective agreement.

Sources: §156-158 of the Labour Code

Right to Strike

Constitution recognizes the right of workers to strike as a means of resolving a collective labour dispute. If conciliation does not lead to the resolution of a collective labour dispute, the workers (representatives) will have the right to start a strike. Decision about strike is adopted by the meeting (conference) of employees. Meeting of workers has a quorum if it is attended by more than half of the total number of employees (for conference - at least two thirds of the delegates). Decision to go on strike is made by a majority of the votes. The employer shall be warned in writing not later than five working days about the beginning of the upcoming strike. The minimum necessary work (services) must be performed during the strike.

Strikes are forbidden in following cases:

- state of emergency, military situation, force majeure;
- army, internal affairs, fire department, emergency rescue service, organizations directly serving particularly dangerous types of production and equipment, ambulance;
- organizations directly connected with the provision of vital functions (power supply, heating, water, gas, air, rail and water transport, communications, hospitals) or continuous production;
- other cases by legislation.

Employment of a worker is secure during strike and employer cannot regard participation in a strike a violation of labour discipline. Workers are not paid wages for the duration of strike unless the strike is associated with non-payment or late payment of wages. Legislation does not set the order of replacement of workers taking part in strike. Lockout is forbidden.

Sources: §24 of the Constitution; §171-178 of the Labour Code; §16, 17 and 21 of the Law of the Republic of Kazakhstan 'About trade unions' 27.06.2014 № 211-V

DECENT WORK QUESTIONNAIRE

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Check

DecentWorkCheck Kazakhstan is a product of
WageIndicator.org and mojaraplata.kz/main



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>





05/13 Family Responsibilities

15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>





06/13 Maternity & Work

18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>





* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

DECENTWORKCHECK.ORG

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Kazakhstan scored 46 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.