

Proposed changes to Labor Code

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On November 8, 2017, the Ministry of Employment and Labor Relations of Uzbekistan released its draft proposal on introducing amendments and addendums to the Uzbek Labor Code with the aim to improve the business climate within the country (for the document in Russian follow <https://regulation.gov.uz/ru/documents/1814>). Having been adopted more than 20 years ago, the Uzbek Labor Code, being based on the legislation of the Soviet period, continues to contain a significant number of provisions seen as overprotective for employees, relatively rigid and burdensome for compliance for small and medium-sized private companies.

It was expected that the draft law would be presented to the Uzbek Parliament in December 2017, however, its passing was later suspended. As many of its proposals may still be approved later this year, this legal alert briefly reviews some of the most significant propositions of the project:

Fixed-term employment contracts

Currently, Uzbek law permits to conclude fixed term employment contracts in a very limited number of cases and generally, sees them as undesirable. According to Article 76 of the Labour Code, such employment contracts may be concluded with (i) the chief executive officer of a company, his or her deputies, and the chief accountant, (ii) in cases where the nature of performed work does not allow to conclude the permanent contract, or (iii) in specific cases directly provided by Uzbek law.

It is now proposed to significantly expand this list to give more flexibility to a potential employer, as well as to clarify application of the rule (ii) above. The draft law proposes that a fixed term contract must be concluded in cases, where a person is employed:

- to replace a temporarily absent employee;
- to accomplish some specific clearly identifiable work, when the completion time cannot be determined exactly;
- to perform temporary non-recurring work, the period of which does not exceed two months;
- to perform seasonal works depending on environmental conditions;
- to work abroad;
- to perform the work that goes beyond normal activities of the employer, as well as the work associated with temporal expansion of production or expansion of the volume of services provided;
- with foreign citizens employed in Uzbekistan based on relevant migration permits;
- as an intern;
- with some other specific categories of employees.

The fixed term contract may be concluded with the following types of employees:

- employees that have reached the retirement age;
- employees combining work with studying;
- employees taking the position as secondary employment;
- creative workers in the areas of culture and art;
- some other specific categories of employees.

Moreover, small business entities (generally, less than 50 employees) and individual entrepreneurs have a right to employ individuals for a fixed term, provided that such term is not less than 6 months.

As previously, the term of the fixed term contract may not exceed 5 years.

LABOR BOOKS

In accordance with the Uzbek labor legislation now in force, the employer is obliged to keep and maintain the relevant employment record book for each employee, making records of hiring, transfers to other positions, termination of the employment contract, etc. The book represents a passport-like notebook issued by authorised state agencies and sold to a company upon hiring of a new employee.

In accordance with the draft project, the paper-form books will not be issued starting from 2019 and the practice of maintaining relevant records in paper-form books will be abolished from 2021. Instead, electronic records will be kept in the all-Republican online system maintained by the authorised state agency. All the records will be synchronised with the relevant database of tax authorities, so that the tracking of personal income tax payments by employees and social contributions by employers could be streamlined.

DISMISSAL NOTES

The term of employee's advance notification on his/her dismissal at the initiative of the employer due to redundancy, liquidation of the employer etc. is to be reduced from 2 months to 1 month.

Moreover, currently, an employer is obliged to inform regional labour departments on all mass dismissals. The draft law proposes to define the term of "mass dismissal" by introducing relevant thresholds, i.e. a mass dismissal is a dismissal of 10% of employees for companies with less than 100 employees.

PAYMENTS TO EMPLOYEES

It is provided in the draft that employers may make regular salary payments based on actual hours of their employees' work. The draft law gives a detailed description of how the relevant system based on hourly rates and tariffs may be introduced and maintained within a company.

It also seems that the draft law seeks to systematize the payment of allowances for work in specific conditions (dangerous work, work in hard climate conditions, etc.) with references being introduced to relevant rules that have to be elaborated by authorised state agencies.

It is further clarified that payment of bonuses and premiums set in company's internal policies may be suspended or cancelled in case if the employee commits a disciplinary misconduct, as it has to be described in company's internal disciplinary policies agreed with an employees' representative body.

EMPLOYMENT CONTRACTS WITH EXECUTIVE OFFICERS

The draft introduces specific provisions on conclusion and termination of employment relations with company's chief executive officers e.g. a general director or a member of the board of Directors. It is provided that the relevant employment contract has to be agreed and signed by the owner of the company or his/their representative, acting as an employer.

The list of the grounds for the unilateral termination of employment contracts with executive officers at the initiative of the employer is expanded to include cases of the company's insolvency and the cases, where the company's poor performance was caused by faulty actions (inactions) of the executive officer(s).

TEMPORARY EMPLOYEES

The concepts of temporary employees is put forward by the draft law. These are the employees who are hired to perform temporary works lasting for less than 2 month. Simplified rules for employment and dismissal are apply with respect to such employees, particularly, it is not required to make records of their employment in the employees' record books; and the dismissal notice may be given 3 days before the actual termination of the employment relations. The draft law provides that a temporary worker may not be employed for more than two consequent times.

OTHER CHANGES

The draft law contains other novelties that mainly concern employees of state agencies and state-owned enterprises, employment of professional sportsmen and sport trainers and employment of homeworkers.

Generally, many positive changes are in place that have to be welcomed as clarifying some existing provisions, bringing more flexibility to employers and filling in many grey areas in the legislation. Some of the changes, however, seem to require further consideration as their effect is rather ambiguous or insufficiently decisive. Thus, for example, the entitlement of small companies to employ additional workers under fixed term contracts may further deprive them of the willingness to grow out of their status of a small enterprise, whereas the ability to dismiss chief executive officers only for some "faulty" mismanagement looks too limited.