

Lecture 2

Employment Procedure Employment Contract Categories of employees



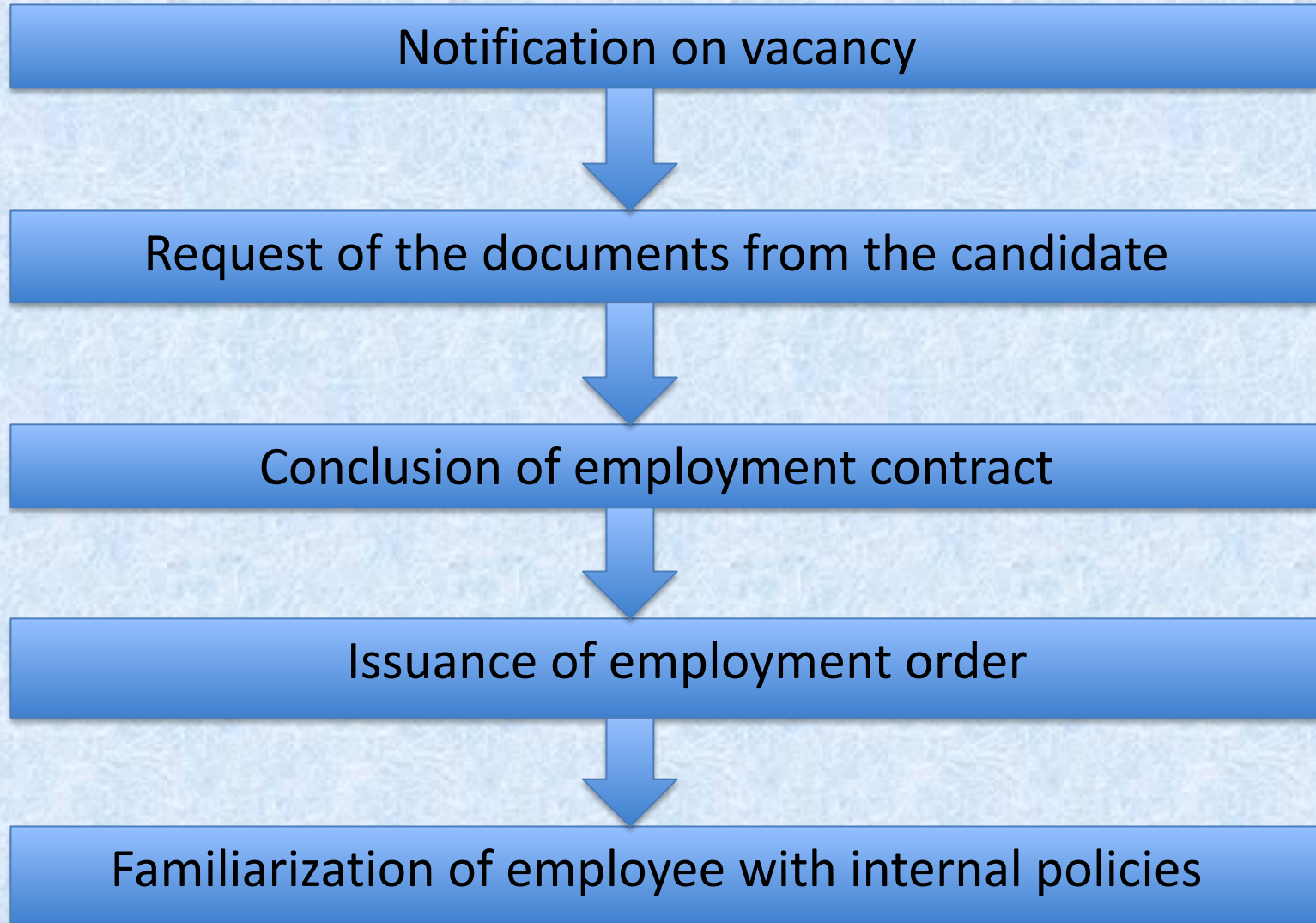
6 September 2016

Agenda:

1. Hiring procedure
2. Pre-requisites to hiring
3. Suitable work
3. Definition and characteristics of employment contract
4. Restrictions to conclusion of employment contract
5. Requirements to the employment contract structure
6. Provisions of employment contract
7. Post-employment procedures, employer's acts
8. Employment of various categories of employees
9. Team match




Hiring procedure:



Pre-requisites to hiring:

Availability of duly developed and approved policies:



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graph TD; A[Availability of duly developed and approved policies:] --> B[Rules of Internal Labour Regulation]; A --> C[Policy on Personal Data Protection]; A --> D[Work Safety Instruction];
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Rules of Internal Labour Regulation

*Require only approval by the employer

Policy on Personal Data Protection

*Require only approval by the employer, but subject to compliance with development procedure

Work Safety Instruction

*Require compliance with development procedure, as well as coordination with work safety department prior to approval

Suitable work:



- For disabled candidates: work with respective access facilities
- For candidates with children under 7 years old: may be work with flexible working hours or part-time work
- For candidates with no work experience and no specialty (or candidates who had not had work experience within more than 2 years): may be work, which required initial professional training
- Temporary work may be suitable for (i) students and high school students during summer vacation period, (ii) candidates with no work experience and qualification, (iii) candidates who are not provided with work due to downtime, (iv) candidates willing to resume work (with no work experience over 2 years) who were sent to professional training by employment department and have not completed it without any reason, (v) unemployed candidates who refused completing additional training/education upon receipt of unemployment payment.

Employment contract is a contract between employee and employer, under which:

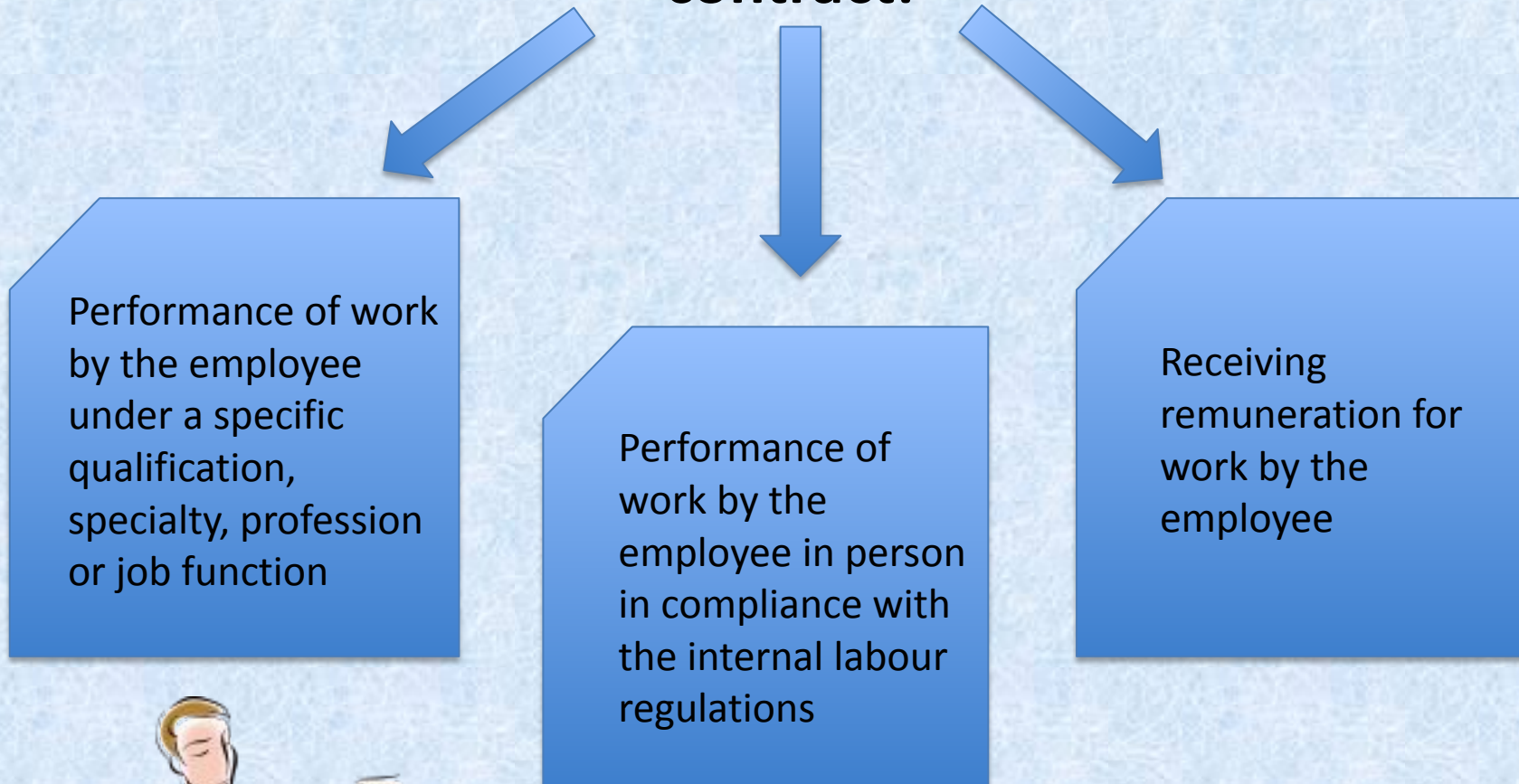
- the employee takes obligation to perform the work in person and comply with the rules of internal labour regulation, while
- the employer takes obligation to provide the work under agreed job description, proper working conditions (as stipulated by the legislation of the RK, collective bargaining agreement and the employer's acts) and pay salary to the employee timely and in full.

Generally, employment contract can be concluded with employees over 16-years old (certain exemptions apply).



Provision of access to work without conclusion of employment contract leads to imposition of administrative fine to official representative of employer in the amount of 20 times the MCI (KZT 42,420) or to the employer in the amount of up to 100 times the MCI (KZT 212,100).

Distinctive characteristics of the employment contract:



Restrictions to conclusion of employment contract:

1	For work, which is not allowed due to the state of health
2	Employment of candidates under 18 for work which envisages either (i) heavy works, or work in hazardous and/or harmful conditions, (ii) full monetary liability, (iii) secondary employment or (iv) works, which can cause harm to health and morals
3	For work, from performance of which candidate is restricted under an effective court resolution
4	Employment of foreign individuals without a valid work permit (subject to some exemptions)
5	Employment of foreign students without provision of certificate from the educational institution and study permit (student visa)
6	For secondary work of employees engaged in heavy works and works in hazardous and/or harmful conditions



Restrictions to conclusion of employment contract:

7	Employment of women to heavy works or works in hazardous and/or harmful conditions, which are enlisted in a respective List of works prohibited for women
8	Employment of former state servants to private legal entities (except for state enterprises, national holdings and legal entities, which are directly or indirectly owned by the state by more than 50%) if such an individual conducted audits or somehow otherwise interrelated with such an entity within a year prior to the date of proposed employment
9	Employment of candidates, who previously conducted corruption violations, to the state entities (national holdings/institutions) for a management position
10	Employment of candidates, who have/had convictions for certain crimes, to the educational, sports, recreational, culture, medical organizations dealing with children under 18



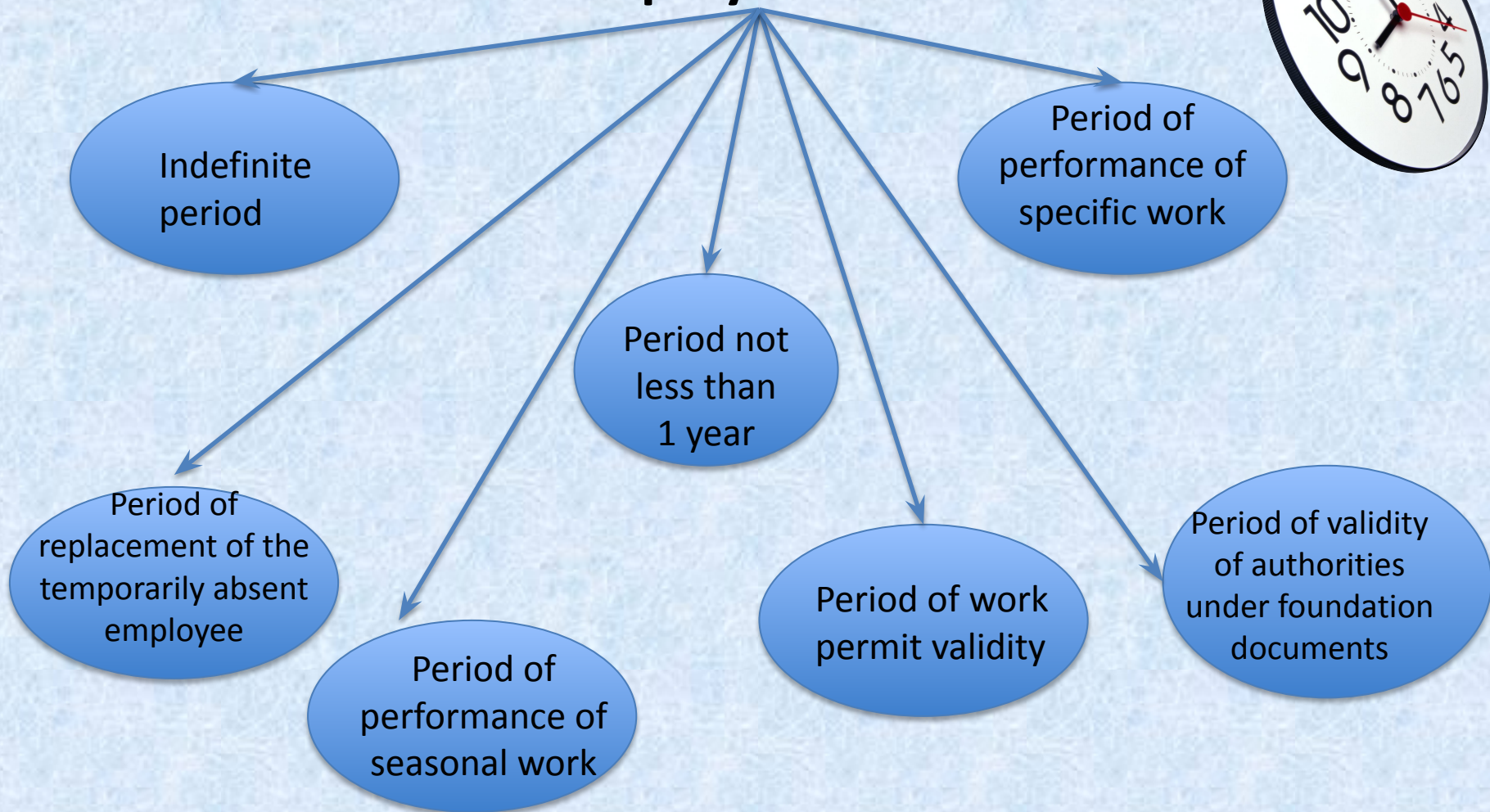
The Labour Code provides for a specific list of items which should be included into employment contract:

1. Full requisites of the parties to the contract
2. Work under a certain specialty, profession, qualification or job function
3. Place of work
4. Term of employment contract
5. Work commencement date
6. Work time and rest time schedule
7. Remuneration conditions
8. Description of work conditions (benefits and guarantees, where needed)
9. Rights and obligations of the employee
10. Rights and obligations of the employer
11. Procedure for introduction of amendments or termination of the contract
12. Liability of the parties to the contracts
13. Date of conclusion and number of the contract



The parties to the employment contract may agree on additional provisions of the employment contract provided they do not contradict labour law of the RK.

Term of employment contract:



Probation period

Term: up to 3 months generally

Exemptions: heads of legal entities and their deputies, chief accountants and their deputies, heads of branches and representative offices: up to 6 months

Probation period should be suspended for the period of employee's absence at work

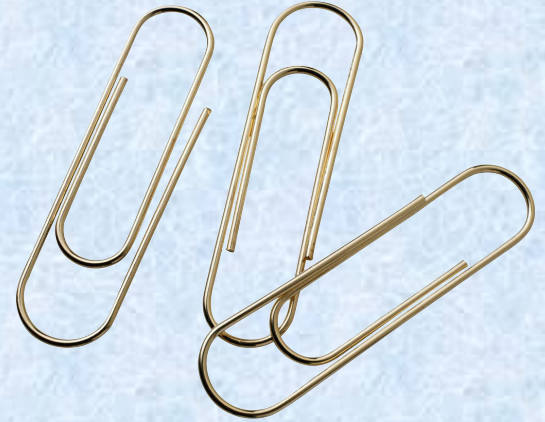
Results of probation period:

Positive – no further actions

Negative – employment contract can be terminated at any time during probation period with a written notice to the employee explaining reasons for unsuccessful completion of probation period

Post-employment procedures:

Obligatory insurance of
employee against
work-related accidents



Work safety
training

Employer's acts

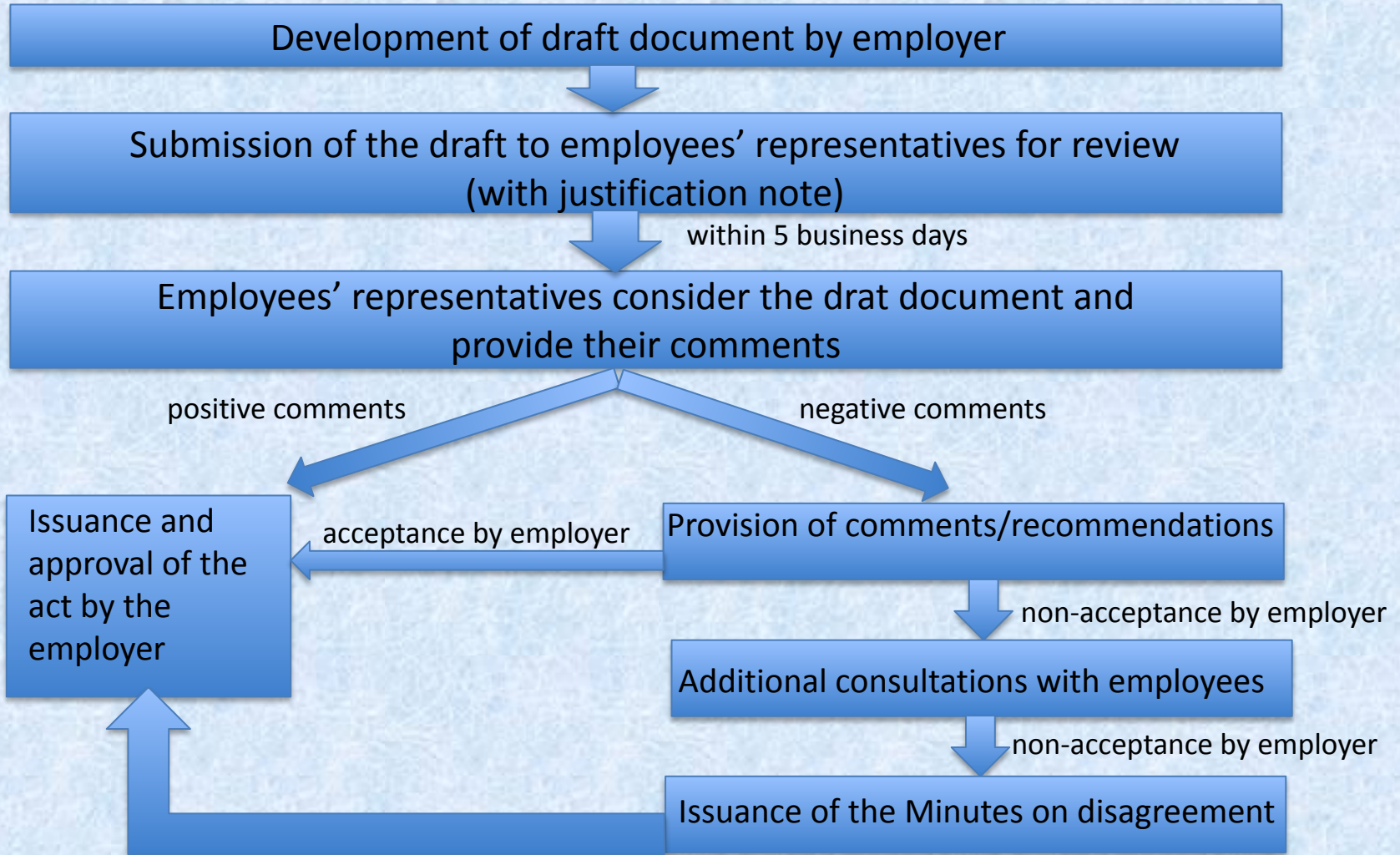
Employer within its scope of authorities can issue the following acts:

- orders (приказы)
- requests (распоряжения)
- instructions
- rules
- policies (положения)
- shift schedules (графики сменности)
- rotation schedules (графики вахт)
- vacation schedules (графики отпусков)

Some of them may require coordination/discussions with employees (their representatives) prior to approval (in particular, vacation schedules and work safety instruction, and other acts if are enlisted in the collective bargaining agreement).



Procedure for negotiation of employer's acts with employees' representatives:



Employment of the member of the executive body

Terms and conditions: general

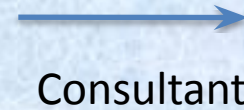
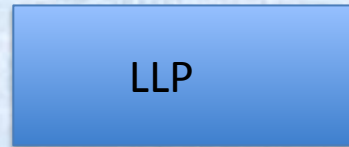
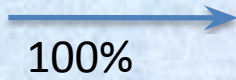
- Extra compensation for early dismissal may be envisaged (golden parachutes)
- Signatory to the employment contract is participant(s) or the duly authorized by participant(s) person
- Term is determined by the legislation, foundation documents or agreement between the parties
- Probation period may be set up to 6 months
- Additional ground for dismissal
- Longer period of possibility to impose disciplinary sanctions



If the sole founder is at the same time appointed as the company's head, no employment contract should be executed. In this case a specific employer's act should be issued.

Team match!!!

RK citizen



1. We need to hire people now. What should we do?



2. What about the founder?

I want to be appointed as the Head (General Director) of the LLP.

What should be done?

What if I further sell part of the participation shares to another individual?



3. We plan to hire 3 (three) IT specialists for the first time. However, we need two of them only for a couple of months. Once they install all software and programs, only 1 IT specialist will be kept in the LLP. We have not decided who will be kept yet – we will monitor their work and will determine further.

What should be done?

PRESCRIBED READING:

1. Articles 12, 24 – 37 and 140 of the Labour Code
2. Article 86 of the Code on Administrative Violations
3. Articles 12, 27 and 28 of the Law on Employment
4. Law on Obligatory Insurance of Employees Against Work-Related Accidents
5. Rules of Conduction of Work Safety Training