



# Labor Law

Madi Kenzhaliyev, LL.M

# Terms & Translations

---

- Appraisal Commission – Аттестационная Комиссия;
- Mediation Commission – Согласительная Комиссия;
- Local Content – Местное Содержание;



# Remark

---

Labor Contract	Service Contract	Contract of Work and Labor
Performance of labor personally in observance of labor regulations;	Performance of service personally, if the contract does not stipulate otherwise;	Contractor (подрядчик) free to determine the provision of services;
Receipt by the employee of a wage for labor;	Receipt of payment for provided services;	Receipt of payment for provided services;
Providing work in accordance to specific qualifications, speciality or profession.	No requirements with regards to the qualifications of the executor.	No requirements with regards to the qualifications of the executor.

# LLP and JSC

---

□ Who can hire on behalf of the:

**1. LLP?**

**2. JSC?**



# LLP and JSC

---

1. **LLP – Executive Body** (President/General Director/Director);
2. **JSC – Executive Body** (President or Collegial Body headed by the President);



# Rescission of the LC on the Initiative of the Employer

---

- Employer's liquidation;
- Failure of probationary period;
- Reduction in staff numbers or positions;
- Unfitness of the employee for the position held;
- Unfitness of the employee due to the health reasons;
- Absence of the employee at work place for 3 or more hours in a row during a single working day (work shift);
- Intoxicated state of the employee at work;



# Rescission of the LC on the Initiative of the Employer

---

- ❑ Violation by the employee of labor safety or fire safety;
- ❑ Theft or deliberate destruction of other people's property;
- ❑ Culpable actions (ВИНОВНЫЕ ДЕЙСТВИЯ) or inaction of employee dealing with money or goods;
- ❑ An immoral act carried out by an employee fulfilling educational functions;
- ❑ Divulgence by the employee of information constituting state secrets or other secrets protected by law;
- ❑ Repeated failure by the employee to fulfill or duly fulfill his job duties;



# Rescission of the EC

---

- Unfitness of the employee for the position held;
- **Procedure:**
- Appraisal Commission;





# Appraisal Commission

---

- Appraisal Commission shall consist of the company's executives and other highly skilled professionals. Also, it necessarily shall include representative of the employees.



# Appraisal Commission

---

## ▣ Steps

1. Step 1 – Preparation;
2. Step 2 – Attestation;
3. Step 3 – Final.



# Appraisal Commission

---

## ▣ 1<sup>st</sup> Step

1. Plan of preparation;
2. An order to conduct periodic evaluation of employees;
3. List of employees subject to periodic evaluation;
4. Certification schedule.



# Appraisal Commission

---

## □ 2<sup>nd</sup> Step

1. Consideration of materials, interview of the employees and their managers.
2. Discussion of the materials between the members of the commission;
3. Assessment of the qualifications of employees, its compliance (or non) to the position held;
4. Open vote of all present members of the commission at registration results.



# Appraisal Commission

---

## □ 3<sup>rd</sup> Step

1. Presentation of the Results;



# Appraisal Commission

---

## □ **Note:**

□ On the basis of the Commission following decision shall be made by the **Employer:**

1. promotion of an employee;
2. increasing (decreasing) the base salary;
3. increasing (decreasing) in position;
4. retraining employees;
5. termination of employment contract



# Mediation Commission

---

## ▣ Mediation Commission

1. Members: quantity established by the agreement of the parties. Shall be equal representatives from both sides;
  2. Responsibility: parties identifies authority of the MC;
  3. Terms: parties identifies terms of the MC.
- ▣ **\*MC reviews labor disputes within seven (7) days.**



# Mediation Commission vs. Court

---

- If one of the Party does not agree with the decision of the MC, they are free to address the issue to the Court.





# Mediation Commission

---

- Terms for application of labor disputes to MC:
  1. **3 months** - on disputes for reinstatement in a job, from the day of termination of LC;
  2. **1 year** - on other labor disputes, from the day when the employee or the employer became aware of the violation of their rights.



# Court

---

- Terms for application of labor disputes to Court:
  1. **1 months** - on disputes for reinstatement in a job, from the day of termination of LC;
  2. **3 months** - on other labor disputes, from the day when the employee or the employer became aware of the violation of their rights.



# Case

---

- Let's assume that you are looking for an employee to be seller for a lingerie store.



# Court

---

- One of the perfect candidates was a woman who wears hijab.
- **Question:**
- If you will reject her, is this considered to be a discrimination?



# Court

---

- ❑ **Answer:**
- ❑ **Par.2 art.7 Labor Code**
- ❑ No-one may be subjected to any discrimination in exercising their labor rights depending on sex, age, physical disabilities, race, nationality, language, material, social or official position, place of residence, attitude to religion, political convictions, tribe or social stratum or membership of public associations?



# Invalidity of the LC

---

- Under the influence of deception, force or threat;
- Without the intent to create actual or legal consequences (a sham employment contract);
- With a person declared legally incompetent;
- With a person under the age of fourteen years, with the exception of the cases envisaged by subpar.3 par.2, art.30 of the Labor Code;
- With a person under the age of sixteen years without the written consent of a parent, guardian or adoptive parent.



# Rights of the Employee

---

1. Conclude, amend, supplement and cancel LC;
2. Demand from employer to fulfill conditions of LC in the manner and on the grounds established by LC;
3. Labor protection and labor safety;
4. Receive full and true information regarding working conditions and labor safety;
5. Timely and full payment of wages;
6. Payment for idle time in accordance with LC;
7. Rest, including annual paid vacation;



# Obligations of the Employee

---

1. Perform his job duties in accordance with the LC;
2. Observance of labor discipline;
3. Observe the requirements of labor protection and labor safety, fire safety and production hygiene;
4. Take care of the property of the employer;
5. Inform the employer of any situation jeopardizing human life and health, safekeeping of property of the employer and of employees, as well as threatening occurrence of idle time;





# Obligations of the Employee

---

6. Not divulge information constituting state secrets, official, trade or other secrets protected by law that becomes known to him in connection with performance of his job duties;
7. Reimburse the employer for harm caused, within the limits established by LC.



# Rights of the Employer

---

1. Free choice of hiring;
2. Amend, supplement or cancel employment contracts with employees;
3. Issue acts of the employer within the bounds of its authority;
4. Create and join associations for the purpose of representation and protection of its rights and interests;



# Rights of the Employer

---

5. Require employees to fulfill the conditions of employment contracts;
  6. Give incentives to employees, impose disciplinary sanctions and hold employees materially;
  7. Recompense for harm inflicted by an employee in performance of his job duties;
  8. Appeal to court for protecting his;
  9. Set a probation period for the employee;
  10. Recompense for expenditures connected with training the employee, if this is stipulated by LC.
- 



# Obligations of the Employer

---

1. Observe the requirements of the labor legislation, agreements, collective bargaining agreements, employment contracts, and acts issued thereby;
2. Conclude an employment contract when hiring an employee;
3. Exercise internal control over labor protection and labor safety;
4. Provide the employee with the work prescribed by the employment contract;



# Obligations of the Employer

---

5. Provide the employee with the work prescribed by the employment contract;
6. Pay the employee wages and other payments envisaged by legal acts, the employment contract, collective bargaining agreement, and acts of the employer in a timely manner and in full;
7. Familiarize the employee with acts of the employer and the collective bargaining agreement;
8. Observe other obligations stipulated by the par.2 art.23 of Labor Code.



# Grounds for Termination of LC


---

1. cancellation of LC by agreement between the parties;
2. expiry of the term of validity of the LC;
3. cancellation of the LC on the initiative of the employer;
4. cancellation of the LC on the initiative of the employee;
5. circumstances beyond the will of the parties;
6. withdrawal by the employee from the labor relations;
7. transfer of the employee to another elected job (position);
8. violation of the terms and conditions for conclusion of the employment contract



# Administrative Liability

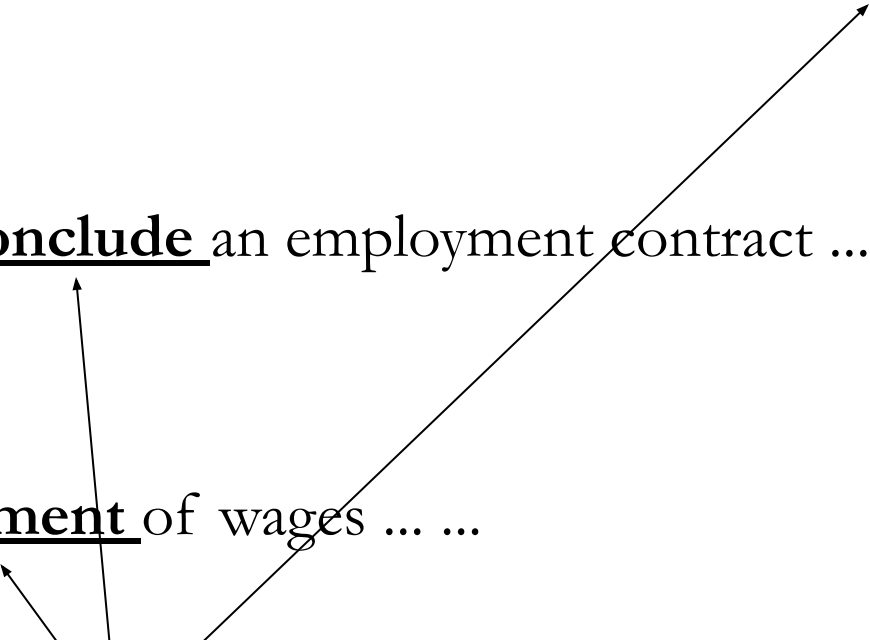
---

1. Violation of the employer or an official of the labor legislation of Kazakhstan ...
  2. — entails a fine upon officials ... legal entities ...
  3. Act (action or inaction)... committed again  
— entails a fine upon officials ... legal entities ...
- 

**No liability of the Employee!!!\***

# Criminal Liability

---

1. Unlawful termination of an employment contract with employee ...  
- shall be punishable...
  2. Unjustified refusal to conclude an employment contract ...
  3. - shall be punishable...
  3. Repeated delays in payment of wages ... ..
  4. - shall be punishable...
- 

**No liability of the Employee!!!\***



<b>DIFFERENCES</b>	<b>LABOR CONTRACT</b>
<b>Name of Parties</b> (art. 683)	<b>Name of Parties</b> (art.24)
<b>Form</b> (art. 151) <b>Oral and Written</b>	<b>Form</b> (art. 1 (32)) <b>Only written</b>
<b>Payment upon result</b> (685, 350, 385)	<b>Payment upon time</b> (art. 134)
<b>Rescission</b> (Расторжение)	<b>Rescission</b>
<b>Terms</b> (art. 2 (2) & <b>Chapter 21</b> )	<b>Terms</b> 24; 14;
<b>Liabilities</b> (ОТВЕТСТВЕННОСТЬ) <b>Chapter 21</b>	<b>Liabilities</b> (Chapter 14 (Labor Code), 152-53 (Criminal Code), 87 (Administrative Code))
<b>Parties(стороны):</b> <u>Any physical</u> & <u>legal</u> entities can be Parties	<b>Parties(стороны):</b> <u>Only</u> legal entities and IE can employ (art. 19, Civil Code)
Does <b><u>not</u></b> need to provide <b><u>work conditions</u></b> (all equipment, vacation, insurance, etc)	<b>Provide <u>work conditions</u></b> (all equipment, vacation, insurance, etc) (art. 1 (38) and 315)