



# Labor Law

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# Terms & Translations

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- Time-Based Labor Compensation – Повременная Оплата Труда;
- Piece-Rate Labor Compensation – Сдельная Оплата Труда;
- Occupational Training – Повышение Квалификации;



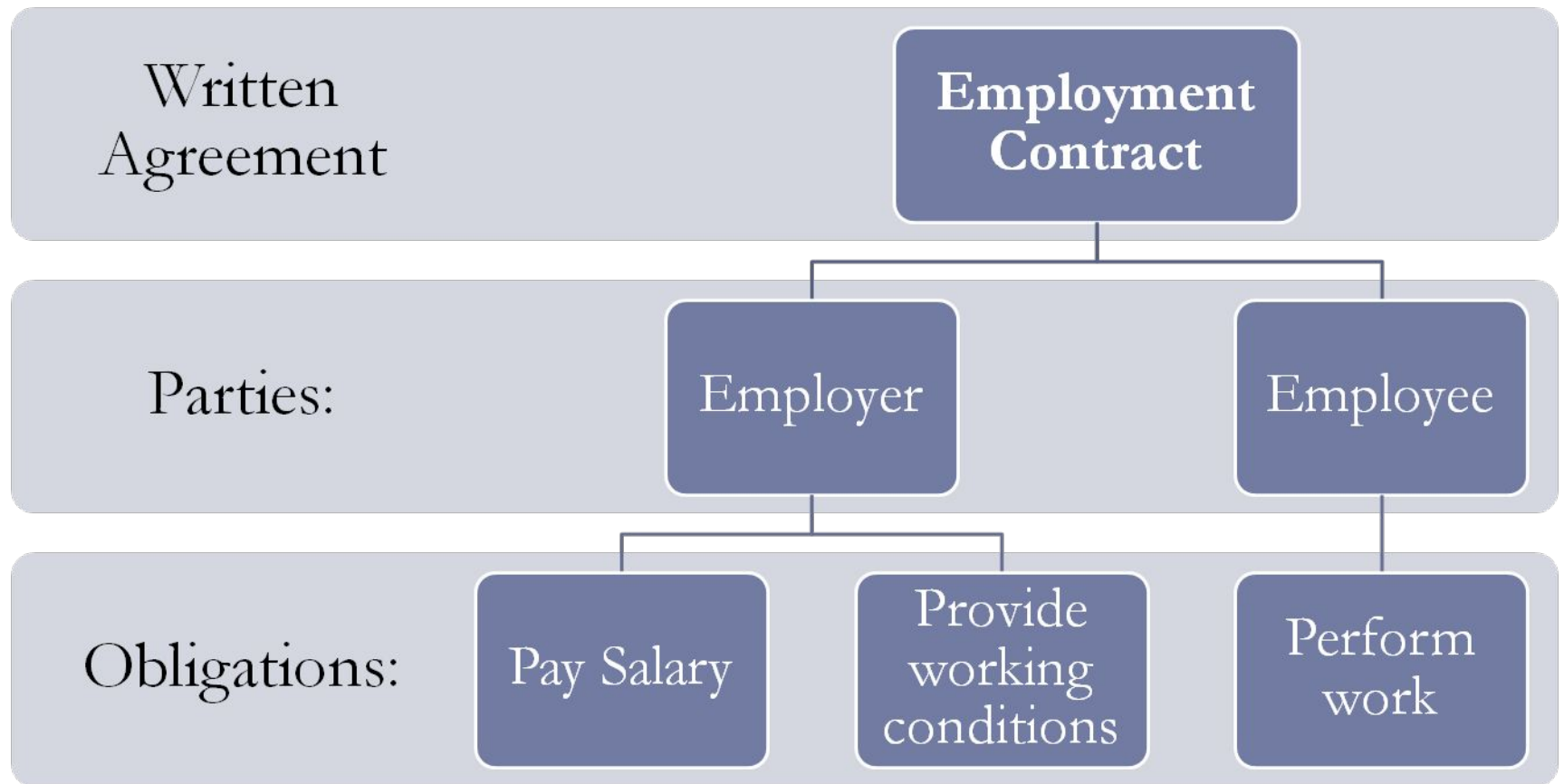
# Remark

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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.

# Labor Contract

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# Labor Contract

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- Subject of the Labor Contract;
- Rights and Responsibilities of the Parties;
- Terms for Paying Salary;
- Working Schedule;
- Terms of Rest;
- Terms Regarding Safety of Labor;
- Material Responsibility of the Parties;



# Working Time

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- Working time may be of:
  1. normal duration;
  2. reduced duration;
  3. or part-time.



# Working Time

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- Normal duration of working time shall not exceed **40 hours** a week (8 hours per day).
- For minors from 14-16 age not more than **24 hours** a week;
- For minors from 16-18 age not more than **36 hours** a week;
- For employees engaged in heavy work or work under harmful and/or hazardous conditions no more than **36 hours** a week.



# Overtime Work

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- What if you're spending more than 8 hours a day for the completion of the job functions, is it considered to be an **overtime work?**



**Deloitte.**



**KPMG**



# Overtime Work

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- The aggregate duration of overtime work shall not exceed **120 hours** a year, **12 hours** a month and **2 hours** a day.
- **Overtime work** is carried out by the employee on the employer's initiative outside the set working hours;



# Case

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- Labor Contract
- From 8.00 – 17.00
- Rest from 13.00-14.00
- Actual time: 8 hours a day – **40 hours a week.**
- **Labor Code** not more than **36 hours a week.**



Да, цветы это именно то, что мне  
сейчас действительно нужно

# Case

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- **Sub-par.79 par.1 Art.1 Labor Code**
- Overtime Work – work carried out by the employee on the **employer's initiative** outside the set working hours;
  
- **Par.1 Art.91 LC:**
- The employer shall record the employee's actual working time.



# Solutions

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1. To apply to the State Labor Inspectorate;
2. Receive the answer from State Labor Inspectorate of the violation and receive Order to Eliminate Violation by the Employer;
3. If there will be no results, to apply for the Court.



# Working Time

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- **Art.127 LC:**
- Time-based labor compensation, the payment for overtime work shall be at a rate of at least 150%.
- Piece-rate labor compensation: the mark-up for overtime shall be at least 50% of the wage rate established for the employee.



# Working Time

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- Overtime work – 4 hours a week.
- Assuming that a salary is KZT 300,000 (75,000 a week, 1,875 for an hour)
- $\text{KZT } 1875 * 4 \text{ hours} * 4 \text{ weeks} = 45,000$ ;
- Employer shall pay additional KZT 45,000 per month.



# Case

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- Due to the overwork your employee sleep through the work and missed first half of the day.
- **Can you fire him?**



# Rescission of the LC on the Initiative of the Employer

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- 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

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- ❑ 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;
- ❑ Repeat failure by the employee to fulfill or duly fulfill his job duties;



# Case

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## □ Sub-par.6 par.1 art.54 LC

- Absence of the employee from work without good reason for a period of 3 or more hours in a row during a single working day (work shift);
- Includes:
  1. Absence for 3 or more hours in a row;
  2. Leaving job place;
  3. Taking leave without permission;
  4. Work shift;



# Case

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- Employer shall:
  1. Connect with the employee;
  2. Establish reasons of his absence;
  3. Draw up an act;
  4. Sign the act by to other employees;
  5. Within 1 month period the reasoned order on dismissal is made.



# Case

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- Due to the overwork you sleep through the work and missed first half of the day.
- **What kind of sanctions your Boss can impose?**
- **Can he fine you?**
- **Or withhold from your wages?**



# Withholding of Wage

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## ▣ Art.137 LC:

1. Withholdings from the wages of an employee shall be made only by court ruling;
2. Or, only for the purpose of recovering debt towards the organizations, given the written consent of the employee.



# Disciplinary Sanctions

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□ **Can your Boss impose:**

1. Fine;
2. Warning;
3. Censure - Порицание;
4. Transfer to a position with a lower salary;
5. Change of vacation schedule.



# Disciplinary Sanctions

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□ **It is prohibited to:**

1. Fine;
2. Warn;
3. Censure - Порицание;
4. Transfer to a position with a lower salary;
5. Change of vacation schedule.



# Disciplinary Sanctions

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## ▣ **Art.72. Types of Disciplinary Sanctions:**

1. Admonition - замечание;
  2. Reprimand – Замечание;
  3. Strict Reprimand - Замечание Строгое;
  4. Cancellation of the employment contract on the initiative of the employer.
- ▣ Application of disciplinary sanctions not envisaged by the Labor Code shall be prohibited.





# Disciplinary Sanctions

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- Main salary of the employee is inviolable.
- However, employer have the rights to deprive employee from bonuses (KTY) but, procedure for its deprivation shall be established by the Internal Acts of the Organization.



# Case

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- What if your Boss yells at you all the time?
- Can I make a video of him yelling at me and use it as evidence in a court?
- Can I demand compensation for moral damages?



# Case

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□ Par.4 art.90 CPC:

It is prohibited to use results  
covert (скрытого) use  
scientific and technological  
means.

But you can use any testimony  
and use it as an evidence in  
order to cover moral damages  
in court.

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# Case

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- ▣ **Art.143 Occupational Training**
- ▣ Employees shall have the right to occupational training, re-training and further training, including training in new professions and specializations.



# Case

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## ▣ **Art.143 Occupational Training**

- ▣ On completion of the occupational training, re-training and further training, the student shall work for the employer for a period of time agreed between the parties in the study agreement.



# Case

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- Has the employer right to demand from the employee to fulfill his obligation according to the LC?
- Can employee rescind the contract without fulfilling his obligations?



# Labor Contract

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- Reducing positions during the leave for a childcare.
- **Par.1 Art.185 LC:**
- It is prohibited to rescind the LC with pregnant women, women with children under the age of three years, single mothers bringing up a child under the age of fourteen years.



# Labor Contract

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## ▣ **Par.2 Art.185 LC:**

- ▣ In the event that, on the day of expiry of the employment contract, a woman present a medical report confirming pregnancy of 12 or more weeks, the employer shall, at her written request, prolong the employment contract until the last day of childcare leave, when the child reaches the age of three years.





# Rights of the Employee

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1. conclude, amend, supplement and cancel LC;
2. demand from the 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

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1. perform his job duties in accordance with the LC;
2. observe 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

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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

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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

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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.
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# Obligations of the Employer

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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

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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

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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





# Invalidity of the LC


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- 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.



# Administrative Liability

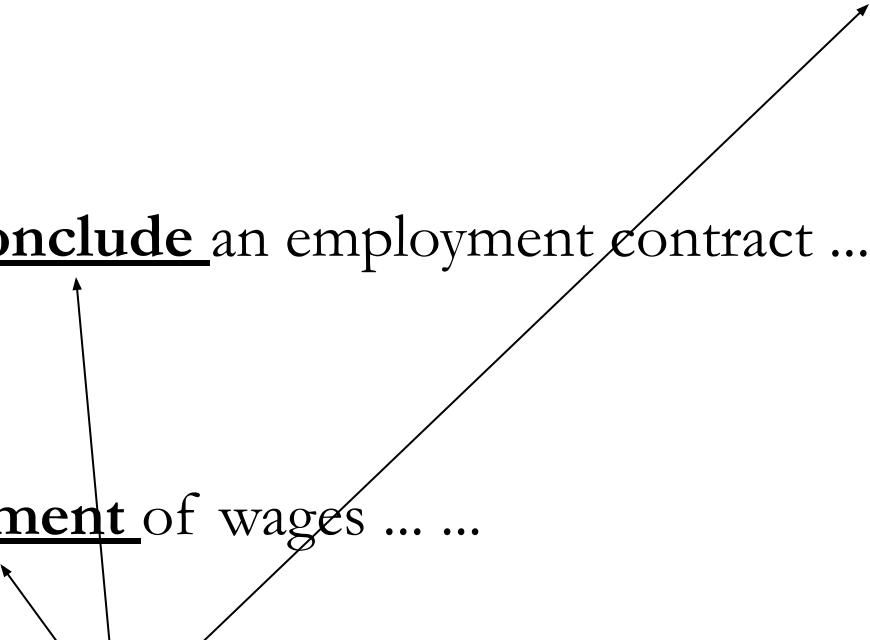
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1. Violation of the employer or an official of the labor legislation of Kazakhstan ...
  2. — entails a fine upon officials ... legal entities ...
  3. Act (action or inaction)... committed again  
— entails a fine upon officials ... legal entities ...
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**No liability of the Employee!!!\***

# Criminal Liability

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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!!!\***

<del>Differences</del> <del>CONTRACT</del>	<del>LABOR CONTRACT</del>
<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)