



# Labor Law

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# Terms & Translations

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- Labor Code – трудовой кодекс;
- Labor Contract (LC) – трудовой договор;
- Employer – Работодатель;
- Employee – Работник;
- Rescission – Расторжение;



# Example

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- You started a new business – providing IT services;
- Later you asked your friend to work with you and shared labor functions as follows:
- You dealing with promotion;
- While Serega provides IT services;



# Example

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- Since you are best friends you did not conclude any contract and shared earnings in half.
- During one of the inspections, Labor Inspector required you to provide a labor contract with your friend, since he decided that your are an employer.
- **What to do?**



# Example

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□ Do you have to conclude:

1. Labor Contract?
2. Service Contract?
3. Contract of Work and Labor (Договор Подряда)?



# Labor vs. Service

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- Labor is geared at creating material values while Service is aimed to satisfy non-material needs.
- For example – on the basis of labor you produce certain goods – production of computers, vehicles, food and etc.
- Services – does not specifically produce goods but it is aimed at fixing and repairing those goods.



# Labor vs. Service

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- Nevertheless, on the basis of Contract of Work and Labor (Договор Подряда) you can produce certain goods.
- **So, how can we differentiate Labor from Service?**



# Labor

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- Distinction between Labor Contract and other types of agreements:
  1. Performance by the employee of work (labor function) according to specific qualifications, speciality, profession or position;
  2. Performance of the obligations personally in observance of the internal labor regulations;
  3. Receipt by the employee of a wage for labor.





# Labor Contract

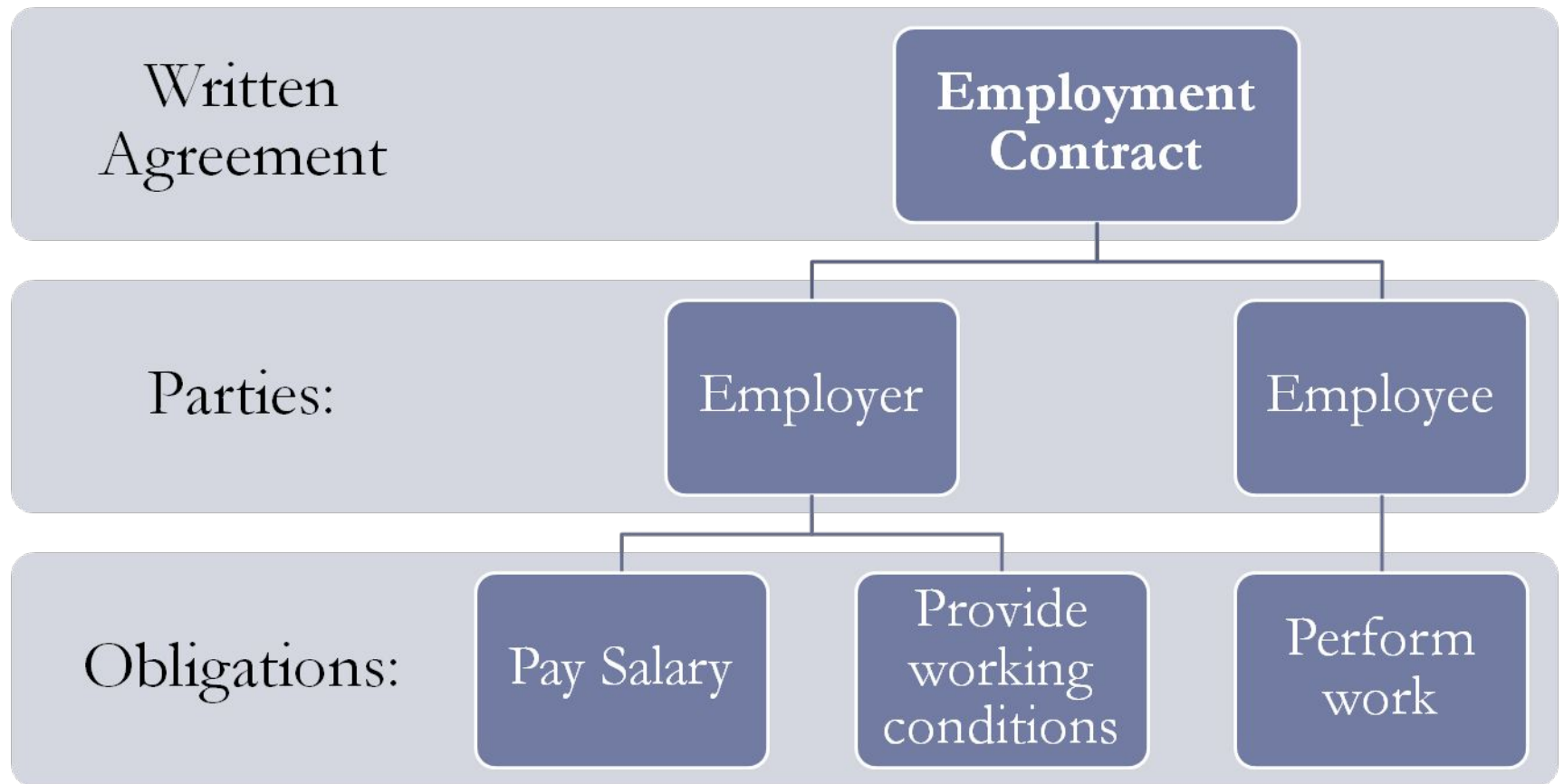
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- Labor Contract is a written agreement between the employee and the employer, in accordance with which:
  1. employee personally undertakes to perform specific work and to observe labor regulations;
  2. while the employer provides employee with work involving the agreed labor function, to ensure the working conditions envisaged by the labor laws of RK, the collective bargaining agreement, acts of the employer, and to pay the employee wages in a timely manner and in full.



# Labor Contract

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# Terms of the CC

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- Generally, parties are free to establish any terms in the Civil Contracts on the basis of the agreement.



# 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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❑ What you need to conclude Labor Contract?



# Labor Contract

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- You have to be registered as an:
- 1. Individual Entrepreneur;**
- Or establish:
- 2. Legal Entity.**



# Example:

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- Let's assume that your friend Serega is only 15 years of age.
- **Can you conclude a Labor Contract?**



# Age for Concluding LC

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- A labor contract may be concluded with the citizens, who have reached the age of 16.
- Or, with the written consent of a parent, guardian with a citizen:
  1. who reached 15 years, if they receive general secondary education;
  2. students reached 14 years, to perform work in their free time, which is not harmful to health and does not disrupt the learning process;





# Example:

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- Lowest age – is minors who did not reach age of 14 only in:
- Cinematography;
- Theatrical;
- Concert organizations;
- Circuses.



# Subjects of the Labor Law

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□ Legal Capacity and Competence  
(Правосубъектность);

1. Legal Capacity;

2. Deed Capacity;

3. Delictual Dispositive Capacity  
(деликтоспособность).



# Subjects of the Labor Law

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- Subjects of the Labor Law by entering into a legal relationship, acts as their members, such as employees, employers, unemployed individuals, the mediators in the resolution of collective labor disputes, members of the professional unions, persons providing labor mediation, and others.



# Parties

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- The parties to the labor relations are the employee and the employer.
  - **Employee** is an individual maintaining labor relations with the employer and directly performing work under an employment contract.
  - **Employer** is an individual or legal entity with which the employee maintains labor relations.
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# Subjects of the Labor Law

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- Employee is an individual - citizen of the Republic of Kazakhstan, foreign citizen, stateless person, migrant worker, refugee, repatriate, etc.
- Employer – could be an individual (individual entrepreneur), legal entity, state or administrative-territorial units;



# Object of the Labor Law

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- The object of labor law is a work (ability to work). The object of the employment relationship is associated with a set of tangible and intangible benefits that are achieved by the parties of the employment relationship in the process of its implementation.



# Rescission of LC

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- Let's assume that you were hired as a business analyst for Pepsi. After one month of your service, Coca Cola offered you similar position with much better personal terms and higher salary.
- **So now you want to leave the firm.**
- **Can you do this?**



# Rescission

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## ▣ Par.1 Art.57 LC

- ▣ The employee shall have the right to cancel the employment contract on his own initiative by giving the employer at least one month's written notice to this effect;





# Rescission

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- After your written notice on rescission of the contract, Coca Cola suddenly found another candidate with better CV and with a longer working experience and doesn't interested in you anymore...
- **Can you revoke your written notice on rescission of the LC?**



# Rescission

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## ▣ Par.5 Art. 57 LC

- ▣ During the notice period envisaged by this article, the employee shall have the right to revoke, in writing, its application for cancellation of the employment contract.



# Rescission of LC

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- ❑ Let's assume that after a month of joint work with Serega you realized that he is a not competent worker and he constantly fails to perform his working functions.
- ❑ **So now you want to fire him.**
- ❑ **Can you do this?**



# Rescission

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- ❑ How can you:
- ❑ Terminate Contract in Civil Law?
- ❑ Terminate Contract in Labor Law?



# Rescission

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## ▣ Par.5 Art.56

- ▣ The employer shall, in the event of cancellation of the employment contract, take steps to transfer the employee to another job, given his consent;



# Rescission

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## ▣ Par.3 Art.54

- ▣ Employer can rescind a LC with an employee for unfitness of the employee for the position held or work performed as a consequence of inadequate qualifications;



# Rescission

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## ▣ Par.6 Art.56

- ▣ Cancellation of the employment contract on the initiative of the employer owing to unfitness of the employee for the position held or work performed as a consequence of inadequate qualifications shall be based on a decision of an appraisal commission including an employees' representative;



# Labor Contract

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- Acts of the employer is orders, directives, instructions, provisions and labor regulations issued by the employer.
- Collective bargaining agreement is a legal document in the form of a written agreement between a team of employees (КОЛЛЕКТИВ РАБОТНИКОВ) and the employer, regulating socio-labor relations within the organization.





# Terms of the LC

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- Let's assume that you are hired by Coca Cola and this is your first place of job.
- **For what period you can sign LC?**



# Terms of the LC

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- According to the art.29 of LC: employment contract shall be concluded for:
  1. **indefinite period** (на неопределенный срок);
  2. for a specific period of not less than **1 year**;
  3. for a specific period not less than **2 years** with a **young professional** (молодой специалист) who is employed for the first time;



# Terms of the LC

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- For a specific terms:
- 4. during the performance of a specific work;
- 5. during replacement of a temporarily absent employee;
- 6. at the time of the seasonal work.



# Probationary Period

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- Employer may establish a probationary period which shall not exceed three (3) months period. However, probationary period shall not be established for:
    1. persons hired on a competitive basis to take up a position (замещение должности);
    2. persons completing a secondary or higher professional education and starting work for the first time in the specialty studied;
    3. the disabled.
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# Content of the Labor Contract

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- The employment contract shall have content according to the par.1 art.28 of the Labor Code, and generally should include the details of the parties, job description, term of the employment contract, place of the job performance, rights and obligations and responsibilities of employee and employer and other conditions stipulated by the LC (labor code).



# 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.



# Rescission of the LC on the Initiative of the Employer

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- liquidation of employer's legal entity or termination of activities of individual employer;
  - reduction in staff numbers or positions;
  - unfitness of the employee for the position held;
  - unfitness of the employee for the position held or work performed as a consequence of health reasons;
  - a negative result of work performed during a probationary period;
  - absence of the employee from work without good reason for a period of three or more hours in a row during a single working day (work shift);
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# Rescission of the LC on the Initiative of the Employer

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- presence of the employee at work under the influence of alcohol, narcotics or toxic substances;
- violation by the employee of the rules for labor safety or fire safety entailing serious consequences;
- theft (including minor theft) or deliberate destruction by the employee in the work place of other people's property;
- culpable actions (ВИНОВНЫЕ ДЕЙСТВИЯ) or inaction of employee dealing with money or goods if these actions or inaction provide grounds for employer to lose his trust in him;





# Rescission of the LC on the Initiative of the Employer


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- an immoral act carried out by an employee fulfilling educational functions that is incompatible with continued performance of the given work;
- divulgence by the employee of information constituting state secrets or other secrets protected by law that he acquired in connection with performance of his job duties;
- repeat failure by the employee to fulfill or duly fulfill his job duties, without good reason, provided a disciplinary sanction has been imposed thereon;



# Administrative Liability

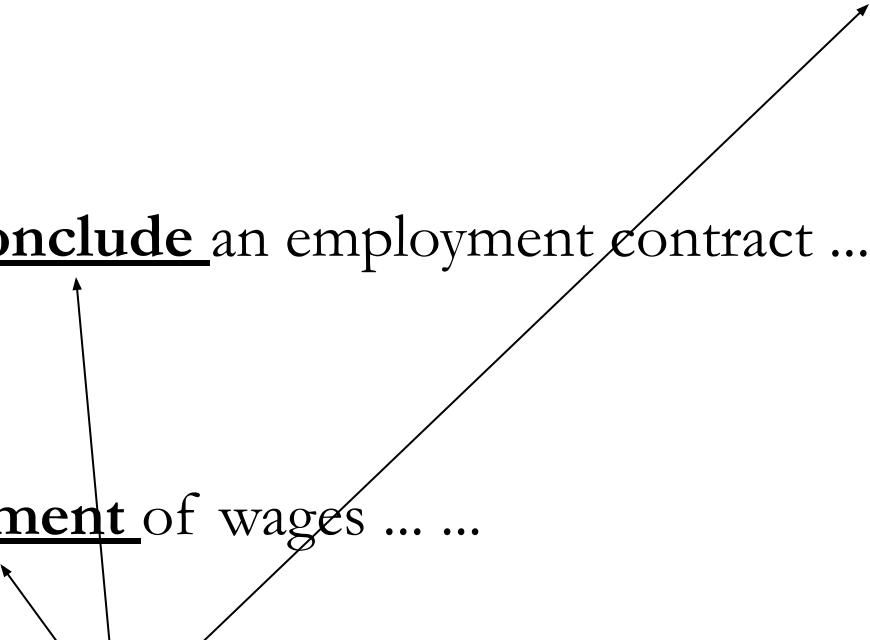
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1. Violation of the employer or an official of the labor legislation of Kazakhstan ...
  2. — entails a fine upon officials ... legal entities ...
  3. Act (action or inaction)... committed again  
— entails a fine upon officials ... legal entities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

# Differences

CIVIL CONTRACT	LABOR CONTRACT
<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)