

**Liberalization labor reform
in Kazakhstan: a challenge to
society or new opportunities**

Current situation

➤ **Eurasian economic integration:**

- January 1, 2015 the Eurasian Economic Union came into force,
 - all boundaries have been taken away, labor resources flows between 5 countries no more have any barriers to cross

➤ **World Trade Organization:**

- October 31, 2015, after 20 years negotiations Kazakhstan became the 162-nd member of the WTO.
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Problems

- High load on employers burdened with a high share of guarantees and compensatory payments.
 - Bureaucracy and abusive regulatory activities in procedures of hiring, dismissal, and relocation of employees.
 - Highly regulated norms of labor legislation, impossibility of temporary employment.
 - Formal and informal employment.
 - Tools for collective agreement relations and social partnership are underdeveloped.
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Key point

➤ the President of Kazakhstan ordered the Government to take measures of liberalization of labor relations with drafting a new Labor Code*.



* The reform is based on the labor standards of the OECD. Particularly, the Labor Code draft will provide a specific list of economic reasons, determining the validity and legality of the dismissal.

Labour regulation models

Features	Labour regulation model		
	European (continental)	Anglo-saxon	Kazakhstan
Labour legislation methods	rigid	liberal	rigid
Laws' enforcing	strict	strict	weak
Wages' differentiation degree	low	high	high
Major factor of differentiation	qualification	qualification	field of activity
Social guarantees' level	high	low	high
Unioinization's level	high	low	low
Employees' participation in management	high	high	low

Labour regulation models

EUROPEAN (CONTINENTAL) MODEL	ANGLO-SAXON MODEL	KAZAKHSTAN MODEL
		
EU states, Switzerland	USA, UK, Canada, Australia, New Zealand	Republic of Kazakhstan

State

- | | | |
|---|---|---|
| <ul style="list-style-type: none"> ▪ A minor involvement in the process of regulation of labor relations ▪ It focuses state policy to create long-term employment and stability of the labor market ▪ Rigid guaranteeing a high level of respect for the rights of employees. | <ul style="list-style-type: none"> ▪ A low involvement in the process of regulation of labor relations ▪ It focuses public policy on reasonable contractual freedom and contractual relations in the collective labor issues ▪ Increased role of the court in dealing with labor issues. Soft guaranteeing respect for the equal treatment of employees | <ul style="list-style-type: none"> ▪ A minor involvement in the process of regulation of labor relations ▪ It does not stimulate employment and labor market development ▪ Rigid guaranteeing of employees' rights with their low respect |
|---|---|---|

Labour regulation models

EUROPEAN (CONTINENTAL) MODEL	ANGLO-SAXON MODEL	KAZAKHSTAN MODEL
		
EU states, Switzerland	USA, UK, Canada, Australia, New Zealand	Republic of Kazakhstan

Employer

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> ▪ Wide freedom in hiring workers ▪ Sufficiently freedom to dismiss staff, but only for clearly defined list of reasons and conditions ▪ practical difficulty in dismissing unclaimed employee ▪ responsibility for a wide range of social obligations to the employee | <ul style="list-style-type: none"> ▪ Wide freedom in hiring workers ▪ Full freedom to dismiss staff, factual easiness in dismissing unclaimed employee ▪ De jure, responsible a wide range of social obligations to the employee. In fact, free in matters of dismissal compensation ▪ Flexibility in social obligations providing | <ul style="list-style-type: none"> ▪ Relatively wide freedom in hiring workers ▪ Sufficiently freedom to dismiss staff, but only for clearly defined list of reasons and conditions ▪ practical difficulty in dismissing unclaimed employee ▪ responsibility for a legally prescribed range of social obligations to the employee |
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Labour regulation models

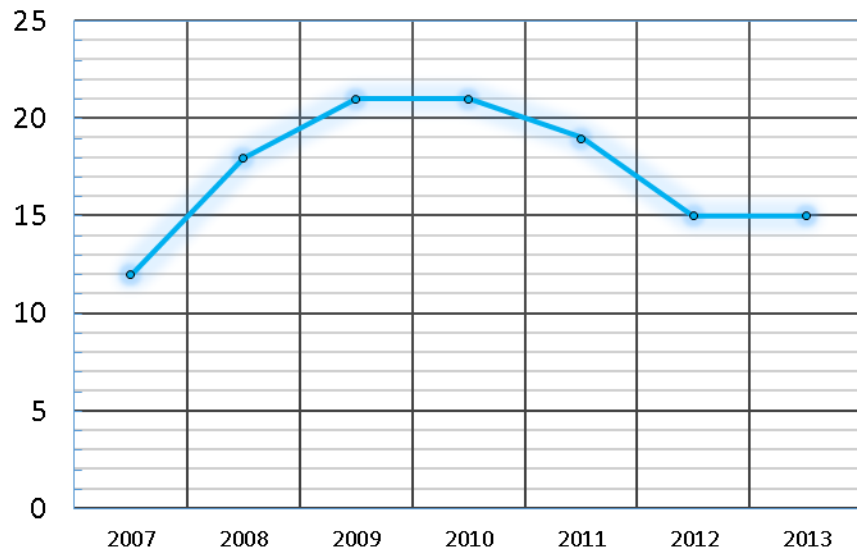
EUROPEAN (CONTINENTAL) MODEL	ANGLO-SAXON MODEL	KAZAKHSTAN MODEL
		
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Employee (employee's representatives)

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> ▪ A high level of legal protection against dismissal (including unfair) ▪ The high level of labor guarantees ▪ Developed practice of unionization ▪ High level of participation in collective bargaining | <ul style="list-style-type: none"> ▪ Sufficient level of legal protection against dismissal ▪ Treaty level of labor guarantees ▪ Relatively developed practice of unionization (locally) ▪ Relatively high level of participation in collective bargaining | <ul style="list-style-type: none"> ▪ Sufficient level of legal protection against dismissal (including unfair) ▪ The high level of labor guarantees ▪ Poor practice of unionization ▪ Low level of participation in collective bargaining |
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Labour regulation: competitiveness increase

GLOBAL COMPETITIVENESS INDEX (WEF)

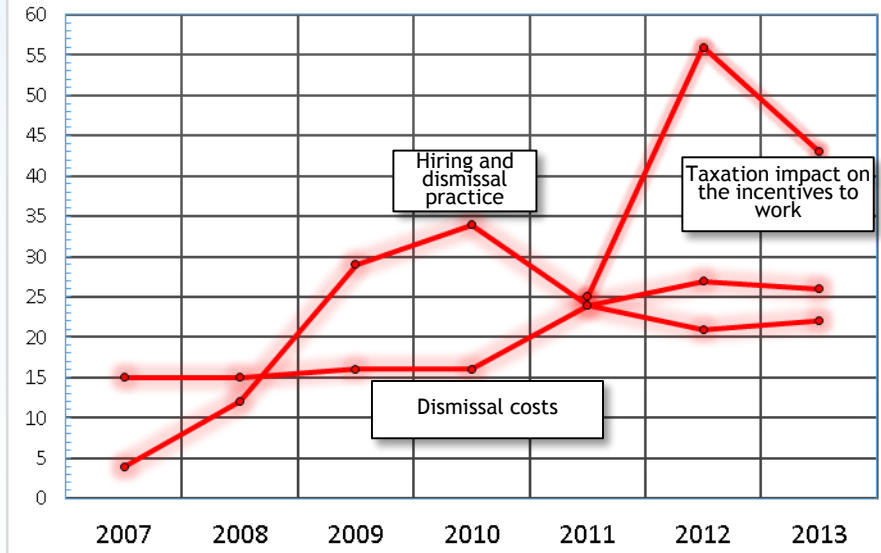


2007 – 12 place; 2008 – 18 place; 2009 – 21 place; 2010 – 21 place;
2011 – 19 place; 2012 – 15 place; 2013 – 15 place.

According to the evaluation of the World Economic Forum experts one of the competitive advantages of Kazakhstan is the “**Labor market efficiency**” factor. Kazakhstan is on the **18th place among 144 countries**.

It allows Kazakhstan **confidently enter the thirty leading countries** in the international rating of competitiveness.

LABOUR MARKET INDICATORS



The following measures should be taken to address the problems associated with indicators:

- 1) The practice of hiring and dismissal;
- 2) The costs associated with dismissal;
- 3) The impact of taxation on the incentives to work;

Conceptual new model of Labour Code

The optimal combination of public and contractual regulation of labour relations, based on the transition:

Firstly, from rigid and over-regulation to minimize government regulation of the rights and obligations of labor relations parties, while strengthening control over the implementation of the requirements of the labour legislation

Secondly, to the local and individual regulation of labour relations based on the principles of self-regulation between employers and employees

Thirdly, to an effective balance between social protection, fairness on the one hand, and economic efficiency, on the other

This model corresponds to the the OECD labour standards (“Guiding principles related to the international investments and multinational enterprises” approved by the OECD Council resolution dated June 21, 1976).

Key provisions of Labour Code

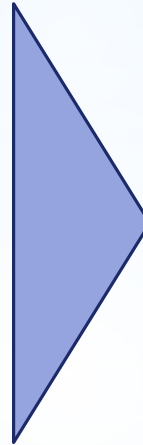
1. Hiring: Increased flexibility in the conclusion of employment contracts

Acting procedures

- Hard restrictions to employer on terms with the re-concluding and prolongation of labor contracts
- No possibility for employer to terminate labor contract with the employee during the probation period
- Prohibition on probation for persons under 18 years of age, people with disabilities and graduates of high and higher education institutions who hasn't previous work experience

Proposed approaches:

- Employer entitled a right to conclude labor contract for an indefinite period, in the case of fixed-term contracts –to provide a right of renewal for a period of not less than 12 months.
- Employer may establish a probation period of up to 3 months and entitled the right to terminate of the labor contract at any time during the probation period.
- To provide probation period for all categories of employees



RISKS

- ▶ The increasing complexity of procedures concerned with the annual renewal of fixed-term contracts

MEASURES

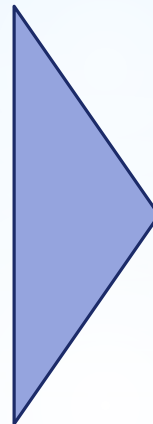
- ▶ To provide conclusion of fixed-term labour contracts for a period of not less than 12 months, which entitles employer to conclude them at any given time.

Key provisions of Labour Code

2. Employees' transfer: increased flexibility in employees' transfer

Acting procedures

- Tough restrictions on the temporary transfer of employees in the case of operational need (downtime, reorganization)
- Restriction on transfer of employees to another position (profession) especially with the reduction of the amount of work
- There are no legal base for transfer of employee from one organization to another (secondment)



Proposed approaches

- To set time limit for temporary movement:
 - For the entire period of inactivity (instead of one month);
 - In the case of operational need up to 3 months for a year (instead of one month).
- To entitle employer to transfer employee (to change of working conditions) to any available job vacancy.
- To entitle employer to transfer employee from one organization to another (secondment) without termination of employment within the dependent legal entity up to three months.

RISKS

- ▶ Abuse by employers:
 - Providing positions which are not appropriated to skilled employees in the presence of other jobs

MEASURES

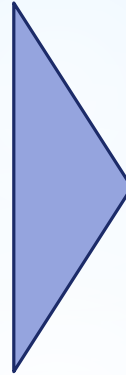
- ▶ Strengthening of state control and the tightening of penalties for violation of labor laws

Key provisions of Labour Code

3. Labour contract's termination: Increased flexibility in labour contract termination

Acting procedures

- Strict regulation of labor contract termination by employer, including 20 reasons: 12 - for violation of labor discipline, 4 – inappropriateness to professional requirements, 2 - on the requirements of the laws, 2 - for economic or organizational reasons (elimination of employer , reducing the number of employees).



Proposed approaches

- To provide the right of employer to terminate labor contract for economic reasons, with obligatory notification of employee, explaining the reasons and the payment of compensation in the amount of two months average salary .
- To classify reasons for labor contract's termination, with the expansion of economic reasons scope.

RISKS

- ▶ Mass dismissals and increased unemployment
- ▶ Abuse by employer

MEASURES

- ▶ To provide specific list of economic reasons, determining the validity and legality of dismissal.
- ▶ Development of a new law on employment insurance, providing strengthening of labor market institutions, increasing payments from the State social insurance fund for job loss. Strengthening social protection against unemployment through the tools of State programs of employment 2020 (extension of micro-credit, training, conversion of the service sector)
- ▶ Strengthening of state control and the tightening of penalties for violation of labor laws

Key provisions of Labour Code

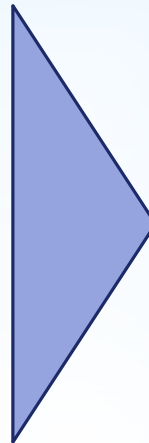
4. Wages: providing of minimum state guarantees with their gradual increase

Acting procedures

Proposed approaches

- Government guarantees of employees wage include:
 - minimum monthly wage;
 - minimum standards of wages (for workers employed in hazardous working conditions)

- Paid work:
 - overtime - not less than one a-half wage rate;
 - on holidays and weekends - no less than twice wage rate;
 - every hour during the night - no less than a half wage rate;
 - at downtime - at least 50% of the average wage of employee



- To exclude from the area of state guarantees minimum standards of wages (for workers employed in hazardous working conditions), transfer the right of its regulation on collective labor relationships

- To set payments
 - for overtime, work on holidays and weekends, as well as at night in an amount not less than 1.25 tariff rate of wage with the right to increase in accordance with the labor contract and collective agreement.
 - **At downtime - not less than the minimum wage (but in agreement with employer)**

RISKS

- ▶ Tensions of industries approved minimum standards of wages by the Government.
- ▶ Increasing the number of individual and collective labor disputes

MEASURES

- ▶ Concerning with the delimitation of the functions and competence of the Government these rules will be approved by the Ministry of social development.
- ▶ Additional payments related to the hazardous conditions to be included in the mandatory conditions of collective labor relationships
- ▶ Strengthening the institution of mediation, conciliation commissions, the role of courts in the settlement of disputes, legal literacy of employees
- ▶ Expansion of legal education and training of employees and employers

Key provisions of Labour Code

4. Wages: providing of minimum state guarantees with their gradual increase

Example:

Employee X, average wage 500\$
40 hours working week (20 working days in a month)
Have worked in a month:
- Overworked hours:12;
- In weekends and holidays – 4 days

Acting procedures

Overall: 765\$ including:

- Monthly average wage – 500\$
- Overworked hours' payment – 65\$
- weekends and holidays work's payment – 200\$

Proposed approaches :

Variant 1,25

Overall : 670\$ including.:

- Monthly average wage– 500\$
 - Overworked hours' payment – 45\$
 - weekends and holidays work's payment – 125\$
- ECONOMY 95\$ or 14%**

Variant 1,5

Overall : 720\$ including:

- Monthly average wage– 500\$
 - Overworked hours' payment – 55\$
 - weekends and holidays work's payment – 165\$
- ECONOMY 45\$ or 6%**

Key provisions of Labour Code

5. Rationing of Labour and qualification system:

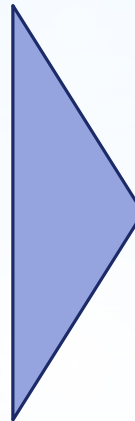
- 1) Reducing state regulation in the field of labor rationing
- 2) Improving the quality of knowledge and skills of employees

Acting procedures

State guarantees in the field of labor rating include:

- model rules and regulations in labor approved by the state authorities;
- supervision of employers to ensure, develop, implement and review of labor standards.

- Development and approval of national, sectoral qualifications frameworks, occupational standards carried out by state bodies



Proposed approaches

- To except the state guarantees in terms of the development of model labor standards, while maintaining the scope of regulation only for the subjects of natural monopolies.
- Provide employer with right to adopt the labor standards considering of the features of labor, equipment and technology, while maintaining state control over the development, implementation and review of labor standards.
- **To delegate development and approval of professional standards for professional associations (self-regulatory organizations)**

RISKS

- ▶ Dissatisfaction of employees with rationing and standards for the time set by employer

MEASURES

- ▶ To provide function of authorized body to adopt the requirements of labor and occupational standards that will be mandatory for all employers
- ▶ Strengthening of state control and the tightening of penalties for violation of labor laws

Key provisions of Labour Code

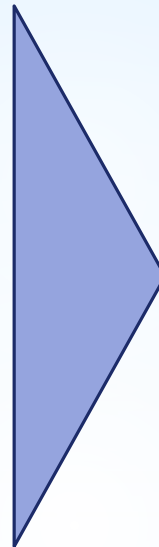
6. Recreation: optimization of employer's costs

Acting procedures

- Additional annual paid leave are provided to:
 - from 6 to 36 days calendar days – to workers employed in hazardous working conditions;
 - at least 15 days – to disabled workers of the first and second groups.
- Reduced working time (not more than 36 hours per week) for employees with disabilities of 1 and 2 groups

Proposed approaches

- To tie a number of days for additional leave to the results of certification on working conditions, which would reduce the number of scheduled jobs, provided list up to 50%.
- The introduction of accreditation of organizations carrying out certification on working conditions.
- Reduce the length of additional leave for disabled workers of the first and second groups from 15 to 6 days.
- To cancel this guarantee which is not incentive to the employment of persons with disabilities.
- It is proposed to stimulate employment through state subsidies



RISKS

- ▶ Increasing the number of individual and collective labor disputes

MEASURES

- ▶ Strengthening the institution of mediation, conciliation commissions, the role of courts in the settlement of disputes, legal literacy of employees
- ▶ Expansion of legal education and training of employees and employers

Key provisions of Labour Code

7. Monitoring compliance with labor legislation:

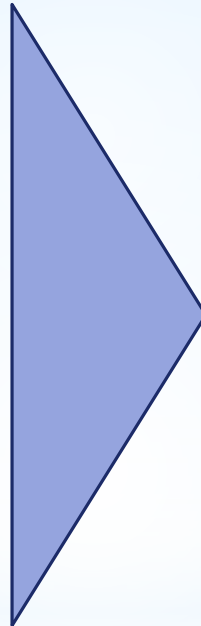
Improving the efficiency of joint action of employers and employees

Acting procedures

- Public control in the field of health and safety in the organization is carried out by public health and safety inspectors, elected trade union committee organization, and in the absence of a trade union - workers assembly. Public health and safety inspectors have the right to:
 - To be involved in the investigation of accidents in the workplace;
 - to protect the rights of workers to health and safety;
 - apply at the request of the employee claims to the courts to protect the rights of workers.

Proposed approaches

- Exclude Institute of public health and safety inspectors and provide its powers within the Committee (Commission) on health and safety, which is on an equal bases will be organized by joint actions of employer and employees to ensure occupational safety requirements and organized inspections conditions and safety in the workplace, informing employees about the results of these checks.



RISKS

- ▶ Dissatisfaction of trade unions

MEASURES

- ▶ Advocacy among trade unions
- ▶ Strengthening of protective mechanisms to ensure the rights of workers to safe working conditions

Key provisions of Labour Code

8. Differentiation of labour regulation :

The key task for today is to create necessary conditions and prerequisites to support small and medium business in the country, therefore the current labor legislation should have a revised concept of the subjective differentiation.

To provide in the Labor Code provisions which express the labor regulation specifics of employees with professional peculiarities.

In this regard in Kazakhstan it is offered to:

- extend the subjective differentiation in labor regulation of some staff categories, including business scale differentiation;
- provide a simplified order in labor regulation at the micro- and small business subjects.

Key provisions of Labour Code

9. Social partnership:

There should be established improved mechanisms to solve the tasks set before labor legislation. This mechanism should be based on the following principles:

I. Social obligations should be accepted by parties on a voluntary basis taking into account interests of parties and realness of performing of those obligations. In this regard the Code should exclude a possibility of employers being forced to follow numerous agreements of various types and levels which make employers undertake high social obligations before staff under conditions when those obligations cannot be economically realized.

II. Expertise of authorities which make republican and regional agreements (including industry-specific) shall be separated in the part related to quantities and content of additional social benefits, guarantees and compensations for staff.

If there are made republican and regional agreements about additional benefits, guaranties and compensations for staff and which exceed financial potential of an employer, then an employer should be given a possibility to only perform obligations accepted before.

III. The Code should provide that social partnership parties are obliged to enter the collective negotiations (agreements) if these obligations cannot be realized due to external factors (including the cost related ones).

Role and responsibility distribution in new Labour Code



STATE

- 1) **Establishing of minimal guarantees and compensations** to staff;
- 2) **determination of basic rights and duties** of employers and staff;
- 3) **establishing of the necessary requirements** and the field of labor safety;
- 4) **providing of state control** over observance of labor legislation;
- 5) **judicial resolution of labor disputes**;
- 6) **taking of necessary social protection** measures in case of job loss.

Role and responsibility distribution in new Labour Code



EMPLOYER

- 1) **Extending rights and duties of employers** in the issues of:
 - hiring and discharging, staff relocation and dismissal;
 - establishing of staff working time and rest;
 - regulation of payment system and staff labor rate setting;
 - 2) **increase of employer's interest in collective-contractual mechanisms of regulation of social-labor relations**, including issues of granting of additional guarantees compensations, and salary increase;
 - 3) **employer's costs optimization** by various types of guarantees and compensations;
 - 4) **strengthening of employer's motivation to advance staff qualification**;
 - 5) **increase of employer's responsibility** on observance of requirements, guaranties, including the issues of labor safety.
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Role and responsibility distribution in new Labour Code

EMPLOYEE (representatives)

- 1) **Strengthening of institution of individual-contractual relations** with an employer;
- 2) **Extending of staff rights and duties** (employee's representatives) during concluding collective contracts and agreements, including issues of:
 - wage indexation;
 - additional types of compensations and guarantees;
 - additional types of leaves, etc.
- 3) **Increase of staff** (employee's representatives) **interest in concluding collective contracts and agreements and regulation of labor relations** within individual-contractual mechanisms.
- 4) **Strengthening of employee's motivation in qualification advancement**, including his/her participation in development of professional standards, dual training.
- 5) **Increase of employee's responsibility** in performing of individual labor contracts, as well as collective contracts and agreements.

Conclusion

Although liberal character of labor reforms their general effect must lead to the strengthening social protection against unemployment through the tools of State Employment Program (including micro-credit, training, conversion to the service sector)

the primary mission of Labor market reforms is to become an instrument of economic recovery and reduction of the massive unemployment
