

Ministry of Labor and Social Protection of the Republic of Kazakhstan

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In response to your letter, the Ministry of Labor and Social Protection of the Republic of Kazakhstan informs you about the following.

**1. “National Legislation”**

In accordance with the Constitution of the Republic of Kazakhstan, the Law on Public Associations and the Law on Professional Unions, citizens of the Republic of Kazakhstan have the right to freedom of association in order to exercise and protect their political, economic, social and cultural rights and freedoms, including resolution of collective labor disputes (conflicts).

Norms improving the efficiency of social-labor conflict regulation have been included into the Law of the Republic of Kazakhstan “On Amending the Labor Code of the Republic of Kazakhstan” on February 17, 2012, namely:

- Meeting (conference) quorum requirements have been simplified;
- More favorable conditions have been established for workers and their representatives to put forward their demands. In the event that workers are unable to hold a general meeting (conference), a representative body of workers has the right to confirm its decision by collecting signatures from more than half of the workers in support of their demands;
- Time allotted to review the workers’ demands has decreased at all stages (by the direct employer, by the employers’ organization, and by the conciliation committee, during strike).

These norms establish conditions for efficient declaration of workers’ demands.

The Law has been drafted in accordance with Kazakhstan's Legal Policy Concept until 2020, which stresses the necessity to improve labor legislation based on a systemic analysis of implementation practices and taking into account international experience.

In order to ensure labor relations' balance of interests among the parties involved, a working group was established to draft the Law (dated January 22, 2010, #22-p) that included representatives of the Ministry of Labor and Social Protection, the Federation of Trade Unions of the Republic of Kazakhstan, the Health Care Employees' Trade Union, the Mining and Metallurgical Industry Trade Union, Kazakhstan's Confederation of Labor, the Confederation of Employers of the Republic of Kazakhstan, the Eurasian Corporation of National Resources, the Union of Manufacturers and Exporters of Kazakhstan, the National Economic Chamber "Union "Atameken," the association "Kazakhstan Council of Foreign Investors," and the Kazakhstan Republic Legislation Institute.

All suggestions that are reflected in the Law have been approved taking into account tripartite principles, in trilateral format with social partners.

Besides that, the law had been drafted taking into account remarks and suggestions of the International Labor Organization Committee of Experts.

## **2. "Foreign Funding of Unions"**

Priority of the constitutional norms and principles is stipulated in article 5 of the Constitution of the Republic of Kazakhstan that states that the provisions of the Constitution, the laws corresponding to it, other regulatory legal acts, international treaties and other commitments of the Republic as well as regulatory resolutions of the Constitutional Council and the Supreme Court of the Republic shall be the functioning law in the Republic of Kazakhstan.

The Constitution has supreme legal validity and a direct effect on the entire territory of the Republic.

International treaties ratified by the Republic take precedence over the national legislation and are applied directly, besides instances when the international treaty states that adoption of national legislation is required in order to implement that treaty.

In accordance with point 1, article 23 of the Constitution of the Republic of Kazakhstan, citizens of the Republic of Kazakhstan **shall have the right to freedom of association**. The given constitutional right of citizens is implemented by forming public associations in the form of political parties, trade unions and other non-commercial organizations established on a voluntary basis in order to achieve common goals.

In accordance with point 4, article 5 of the **Constitution of the Republic of Kazakhstan, financing** of political parties and trade unions by foreign legal entities and citizens and foreign states and international organizations **shall not be permitted.**

The Resolution of the Constitutional Council of the Republic of Kazakhstan dated June 7, 2000 # 4/2 “On Official Interpretation of point 4, article 5 of the Constitution of the Republic of Kazakhstan” states that the norm of point 4, article 5 of the Constitution of the Republic of Kazakhstan stating that “financing of political parties and trade unions by foreign legal entities and citizens, foreign states and international organizations **shall not be permitted**” shall be interpreted as legal prohibition to receive monetary and other material means by political parties and trade unions.

Besides that, the abovementioned Resolution of the Constitutional Council notes that “analysis of a similar experience in foreign countries shows that such prohibitions on foreign aid for political parties and trade unions are present in national legislations and that they include both ‘financial’ and ‘other aid’ from outside.”

Thus, this norm of the Constitution of the Republic of Kazakhstan is aimed at protection from foreign influence and at securing self-sufficiency and independence of political parties and trade unions.

### **3. “Labor Dispute Regulation”**

In accordance with the Labor Code, collective labor disputes may be resolved in the following order:

**Employer’s consideration** of employees’ claims;

*Note:* Within the framework of this procedure the employer shall consider employees’ claims no later than within three business days from the date such claims have been received and shall take steps to settle them and, if it is not possible to settle these claims within the abovementioned time frame, to inform the employees in writing of its decisions and proposals, indicating its representatives for subsequent consideration of arising disagreements (article 290 of the Labor Code of the Republic of Kazakhstan).

Mediation procedures that are consecutive evaluations of a collective labor dispute by a **mediation commission**, and if agreement cannot be reached by mediation commission, then by **an arbitration;**

*Note:* The mediation commission shall be formed from representatives of the parties to the collective labor dispute on a parity basis. The decision to set up a mediation commission shall be executed as an act of the employer and a resolution of the employees' representatives.

The mediation commission shall consider the employees' claims within three business days from the date of its establishment.

The commission shall adopt its decision on the basis of agreement between the parties. Said decision shall be drawn up in a report, signed by the representatives of the parties, and shall be binding on the parties.

If the mediation commission is unable to reach a consensus, its operation and resolution of the dispute shall be referred to the arbitration.

An arbitration council shall be established by the parties to the collective labor dispute within a period of five calendar days from the date the commission terminated its work, with participation of members of commissions regulating social-labor relations.

The number of members participating in arbitration, its members, and the procedure for considering the labor dispute shall be determined by an agreement between the parties. The arbitration council shall consist of at least five members. The arbitration council shall include representatives of public associations, the state labor inspector, specialists, experts and other persons.

The arbitration council shall adopt its decision no later than within seven calendar days from the date of its establishment by a simple majority vote of its members.

The decision of the arbitration council shall be binding on the parties to the collective labor dispute.

It should be noted that according to point 4, article 297 of the Labor Code, if the employees disagree with the arbitration council decision, they have the right to use all the other methods envisaged by law for protecting their interests, including strikes. (*Regulation of strike procedures is governed by articles 298-305 of the Labor Code*);

**By court;**

*Note:* The Civil Procedural Code of the Republic of Kazakhstan regulates issues related to filing a court case.

#### 4. “Right to Strike”

According to point 2, article 303 of the Labor Code, in railroad transport, civil aviation and healthcare organizations, organizations providing domestic services to the population (public transport, water supply, electric power, heat and communications), a strike may be called provided that **the range and capacity of the corresponding services required by the population remain available, these being determined on the basis of a prior agreement with the local executive authority.**

In this case, that applies to a minimum level of services which is determined directly by organizers of the strike.

The abovementioned limitations exist in order to secure the constitutional rights and interests of the rest of the population of the republic who do not take part in local strikes and shall be taken into account by organizers of the strike.

In accordance with sub-point 1, point 1, article 303 of the Labor Code, strikes shall be declared illegal at hazardous production facilities.

In accordance with article 3 of the Law of the Republic of Kazakhstan № 314 dated April 3, 2002 “On Industrial Safety at Hazardous Industrial Facilities,” **hazardous industrial facilities** include facilities that:

- 1) manufacture, use, process, create, store, transport, or liquidate at least one of the following hazardous substances:<sup>1</sup>
- ...
- 3) melt black, nonferrous, precious metals and their composites;
- 4) conduct mining, geological exploration, borings, mining operations, processing of raw materials, underground work;
- 7) operate all types of electricity generating plants used at hazardous industrial facilities;
- 8) operate hydro-technical facilities of hazardous industrial facilities.

Thus, strikes at the abovementioned hazardous industrial facilities are illegal.

These norms do not contradict ILO Conventions, as the International Labor Organization Committee of Experts notes that prohibition of strikes at organizations conducting hazardous industrial activity, in some cases, is stipulated also by national legislation.

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<sup>1</sup> The original Russian version includes a list of such hazardous substances. The original also omits points 2), 5), and 6).

Even though the right to strike is an integral part of the right of association stipulated by ILO Convention 87, the Committee of Experts stresses that “the right to strike is not absolute,” limitations on and prohibition of strikes in vital sectors are necessary in case “termination of operations endangers life, personal safety or health of the population or its particle”

#### **5. “Consequences for Participating in an Illegal Strike”**

According to the Labor Code amendments dated February 17, 2012, the employer has a right to terminate an employment contract with an employee **only in case the employee continues to participate in a strike after he/she was informed about a court decision declaring the strike illegal**. Besides that, strike participants’ notification procedure of a court ruling declaring a strike illegal has been simplified. The employer shall display the text of the court ruling in publicly available places.

This legislation does not contain discrimination or infringement of the employees’ rights and does not contradict ILO Conventions.

#### **6. “Strikes at Ersai Caspian Contractor, KarazhanbasMunai and OzenMunaiGas”**

In May 2011 in the Mangystau region the workers of Ersai Caspian Contractor, KarazhanbasMunai and OzenMunaiGas organized illegal strikes. The workers demanded 100 percent wage increase for all workers, introduction of a 1.8 industrial coefficient to average monthly wages, as well as an increase in compensation for work in harmful or hazardous working conditions and for workers engaged in heavy work.

The strikes were declared illegal by the Mangystau Region Specialized Interdistrict Economic Court ruling dated May 18, 2011, the Tupkaragan District Court ruling dated May 20, 2011 and the Zhanaozen City Court ruling dated May 27, 2011.

It should be noted that from the beginning of the strike, the Ministry of Labor and Social Protection, the *Akimat* of the region, the Mangystau region Department of Labor and Social Protection and other public authorities, as well as representatives of the companies had continuously conducted explanatory meetings with the workers and the local population.

**On May 13, 2011**, an interagency government commission meeting chaired by the Deputy Minister of Labor and Social Protection took place, which was set up **to investigate and examine a collective appeal**. At that meeting the Deputy Minister presented detailed explanations about raised questions.

Besides that, initiators of the collective appeal, including Sokolova N. and Azhigalieva N., could not objectively substantiate legality of the workers' demands.

Karazhanbas union sent requests to the Ministry of Labor and Social Protection asking to clarify implementation of the labor legislation norms, including minimum wage standards and compensation for harmful working conditions. Letters with relevant explanations were sent on January 6, 2011 (№ 03-2-20/32 signed by the Deputy Minister) and on February 21, 2011 (№ 04-1-24/734 signed by the Minister), also to claimant Mendigaliyev M.S. on July 27, 2011, № 14-4075, addressing the issue of dismissals.

On July 14, 2011, according to a report signed by the *Akim* of the region, the chairman of the board of KazMunaiGas Exploration and Production Company, and management of KarazhanbasMunai and OzenMunaiGas, it had been recommended to announce a temporary moratorium on workers' dismissal and to continue explanatory work aimed at returning the workers on strike to work, as well as to employ those workers who had been dismissed earlier.

From August 1 until August 3, 2011, chairman of Department of Labor and Social Protection Bisakaev S.G. visited manufacturing facilities and met with OzenMunaiGas workers. He organized an address from the local television channel *Aktau* to clarify labor legislation norms.

However, notwithstanding all the [explanatory] work conducted and the moratorium on dismissals, the illegal strike continued and the remaining participants of the strike did not have a desire to have a constructive dialogue with employers.

On November 23 and 24, 2011, the Deputy Minister of Labor and Social Protection, with participation of central and local government authorities and independent experts from public associations, conducted meetings with representatives of workers dismissed from OzenMunaiGas, a subsidiary of KazMunaiGas; at these meetings clarifications were also presented.

## **7. "Tripartite Meeting"**

In accordance with an order of the First Deputy Prime Minister of the Republic of Kazakhstan, the Minister of Labor and Social Protection passed the order № 360-p dated October 12, 2011 that created a staff to work with the Zhanaozen population.

In pursuance of this order, on November 14, 2011, during the course of a routine field meeting of the staff working with the Zhanaozen population and the Deputy Minister of Labor and Social

Protection, a suggestion was made to conduct a meeting with representatives of dismissed workers.

Within the period of November 14 through 16, 2011, three meetings took place with representatives of the workers. In these meetings it had been suggested to investigate the situation openly and to include more independent experts and specialists from among lawyers and economist-accountants.

In this regard, on November 23 and 24, 2011, the Deputy Minister of Labor and Social Protection, with participation of central and local government authorities and public associations, as well as management and accountants of the companies, conducted meetings with workers dismissed by OzenMunaiGas, which is a subsidiary of KazMunaiGas.

Representatives of state authorities and accountants of the company explained the calculation of wages and the industrial coefficient as applied to the oil and gas industry in accordance with the Republic of Kazakhstan labor legislation norms.

Representatives of public associations Kaliev E. (from Almaty), Sapargali S. (from Almaty) and Belkin S. (from Karaganda), who were present at the meeting, have admitted and ascertained the fact that wages of the dismissed workers included the coefficient provided for by legislation and a collective agreement.

Independent experts noted that the employment plan proposed for the first stage (TOO Kezbi) was positive.

Representatives of dismissed workers, however, categorically and without explanation refused the terms that were offered.

A draft final report was, in general, supported, agreed upon and considered by experts for signing. However, in spite of OzenMunaiGas specialists' explanations, opinions and conclusions of experts participating in the meeting, representatives of dismissed OzenMunaiGas workers did not agree with the arguments regarding illegitimacy of demands reviewed at the meeting and categorically **refused to sign the final report.**

The Republic of Kazakhstan has a necessary legislative base and mechanisms that regulate collective-contractual relations.



Twenty International Labor Organization conventions have been ratified (four of which regulate issues related to social partnership and labor disputes).

Relevant legislation includes: the Labor Code of the Republic of Kazakhstan, which regulates labor relations, including social partnership and regulation of collective and individual labor disputes; the Law of the Republic of Kazakhstan “On Professional Unions,” which regulates issues related to the creation of trade unions; the Law on Private Enterprise, which regulates establishment and activities of private enterprises; the Law on Mediation, which regulates possibilities of pre-trial and out-of-court regulation of disputes based on consensus.

Mechanisms of collective-contractual relations (Republic-level, industry-wide and regional commissions on social partnership and regulation of social and labor relations) are created on all levels (*republic – industry – region*).

There exist entities of social partnership – unions of workers and employers.

Different levels of social partnership system exist in the Republic:

- Republic level, which establishes a basis for labor relations regulation in the Republic of Kazakhstan;
- Industry level, which establishes a basis for labor relations regulation in various sectors of economic activities;
- Regional level, which establishes a basis for labor relations regulation in the regions and in the cities of Astana and Almaty;
- Organizational level, which establishes specific labor relations related to mutual obligations between workers and employers.

Each level of social partnership addresses its own mission. Agreements are being settled at each level that set up general principles; these agreements act as a basis for further relations between subjects at a given level and for collective bargaining agreements.

The Labor Code defines an agreement as a legal act settled between the parties of the social partnership determining the content and obligations of the parties with respect to the establishment of the working conditions and the employment and social guarantees for employees at the republic, industry and regional levels (sub-point 8, point 1, article 1 of the Labor Code).

At the organizational level, there is a collective bargaining agreement, which is a legal document in the form of a written agreement between employees and the employer that regulates social-labor relations in the organization – is signed at the organizational level (sub-point 78, point 1, article 1 of the Labor Code).

At the republic level, there is a General Agreement between the Government, republic trade unions and republic unions of employers, which is signed for three years (*the General Agreement for 2012-2014 was signed on December 29, 2011*).

At the industry level, industry agreements are signed between an appropriate government body for the industry, industry trade unions and industry employers' organizations (*there are 22 industry agreements in force*).

At the regional level, agreements between the local executive authority, the regional trade union and the regional employers' organization are signed (*there are 16 regional, 37 city and 153 district agreements in force*).

At the organizational level, collective bargaining agreements are signed between employer and employees' representatives (*as of June 1, 2012, the system of collective bargaining agreements has covered 53 thousand enterprises or 84 percent of large and medium enterprises*).

At the republic level, social partnership is secured by the Republic Tripartite Commission on Social Partnership and Regulation of Social and Labor Relations (hereafter, Republic Commission), headed by the Deputy Prime Minister of the Republic of Kazakhstan.

The Republic Commission is a permanently functioning body aimed at coordination of social partners' interests by conducting consultations and negotiations that result in appropriate decisions. Authorized representatives of the Government of the Republic of Kazakhstan, republic trade unions and republic employers' organizations are members of the Republic Commission.

The Republic Tripartite Commission on Social Partnership and Regulation of Social and Labor Relations has conducted two meetings this year (on April 6 and May 7); reports on the work of the industry commission on social partnership in the mining and oil industry and the regional commission on social partnership in the Atyrau and Mangystau regions have been presented at these meetings.

The main directions to prevent social tension and to resolve social-labor conflicts, as well as a number of organizational and executive documents, have been reviewed.

The report of the Commission's meeting issued recommendations to the regional *Akimats*, *Akimats* of the cities of Astana and Almaty, central government authorities, republic trade unions and republic employers' organizations regarding system monitoring of social tensions at regional and industry levels, strengthening of the central executive organs' coordinating role in development and coverage of social partnership in industries under their oversight.

Industry commissions on social partnership and regulation of social and labor relations serve as the main ground for dialogue at the industry level. An industry commission is a permanently functioning body aimed at ensuring coordination of social partnership interests through consultations and negotiations that are properly documented. These commissions include representatives of authorities overseeing the industry, industry trade unions and industry employers' organizations.

A regional commission is a permanently functioning body aimed at ensuring the coordination of social partnership interests through consultations and negotiations that are documented by agreements and decisions. Authorized representatives of local executive authorities, representatives of employers and employees are members of regional commissions. A commission is headed by a region's deputy *Akim*, or a deputy *Akim* of cities of Astana or Almaty.

In addition to this, in order to increase the efficiency of trade union activities aimed at protection of employees' labor rights, the Ministry together with social partners is working on a draft law to improve the Law of the Republic of Kazakhstan "On Professional Unions." The law is expected to be drafted by the end of the year.

Deputy Minister

B. Nurymbetov