

ACTUAL ISSUES OF LABOUR MIGRATION IN THE GRATA INTERNATIONAL COUNTRIES





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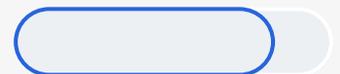
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ESSENTIAL CHANGES IN THE LABOUR CODE OF THE REPUBLIC OF ARMENIA: MAIN ASPECTS



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On May 03, 2023, the National Assembly of the Republic of Armenia passed Law No 160-N entitled “On Amendments and Addenda in the Labor Code of the Republic of Armenia”. This law introduces significant changes to the Labor Code, with a number of articles being amended and several new articles being added.

In this article, we will highlight some of the most notable amendments and additions to the Labor Code.

By amending the Article 89, the legislator envisaged the possibility of hiring of non-residents who will not be required to present public services number, which is considered obligatory for all other categories of the employees.

The referenced novelty allows foreign citizens and stateless persons not having residence in Armenia to enter into employment relationship with the Armenian employer without obtaining the public services number under the main condition of not residing in Armenia.

The Law provides assurances on their labor rights protection to the employees at the age of retirement. In particular, the employer will not have the possibility to discriminate against the retired people, forcing them to sign fixed-term contracts. Now they can be treated with the employment contracts for indefinite term as the rest categories of the employees.

Certain changes have affected regulations on the part-time work. Among those the noteworthy one is that the employer now will not have the waiver for severance payment for the employees under the part-time employment contracts.

For the first time, alongside with the workplace, remuneration size, privileges, work regime, work title, type of the employment contract, the labor functions now to be deemed among the essential terms of the contract.

The lawmaker stipulated the new grounds for the employment contract termination. The new feature is on the employment contract termination “by virtue of the law”.



The addendum comes down to the following: The employer waives the obligation to issue a personal legal act on fixed-term employment contract termination and gains the right to disallow the employee to perform any work obligation once the term of the fixed-term employment contract is over. Thus, the stated under the Article 5 of the Labor Code of the Republic of Armenia and proven by the several case laws, the provision on the personal legal acts of the employment contract termination should be handled to the employees in three-days term upon their issuance, in which cases only they become effective, is not applicable to such terminations. Under the current regulation the main role in termination of the fixed-term employment contracts is reserved to the contract deadline rather than the employer's personal legal act.

Another novelty is related to the new possibility for the employers to terminate the employment contracts on mutual consent grounds at any time in case of an application from the employee. Before this the employers were restricted with the statement that the employees may call back their applications with no further formalities or restrictions within 3-days term upon submission. Now, the employees have a possibility to request their employers to terminate the employment agreements notwithstanding such restrictions – at any time.

In local practice there is a possibility for the legal entities to suspend their operations without applying to liquidation or reorganization processes. Such suspension was not considered by the legislator among the grounds for the employment contract termination on the initiative of the employer in the past. At the same time the new regulation from our viewpoint can easily lead to the violations from the employers' side as far as for the temporary suspension of, for example, limited liability companies only a written application submission to the tax authority is considered as the required action.

THE BENEFICIAL FOR THE EMPLOYEES' AMENDMENTS INCLUDE THE PROLONGATION OF THE ALLOWED TERM OF THE EMPLOYEE'S INCAPACITY FOR WORK: NOW IT WILL COUNT UP TO 180 DAYS WITHIN ANY RECENT 12-MONTH PERIOD.

► Some changes are made to the terms of the employment contract termination on the initiative of the employer. Inter alia the termination for the loss of trust now is not strictly related to the material breach resulted from the incorrect management of the financial or assets or commodities, but also to any conduct which has resulted or may result to any material damage to the employer.

Among the new feature is the mandatory termination of the employment contracts in case of the employer-physical person's death. Before the Law adoption the employees were entitled to continue the employment contracts with the trust manager, which is now being restricted.

- Within the terms of the assurance of the normal worktime duration by a new amendment the lawmaker made the employee the sole responsible for the overtime work duration, which means that in order for the employer to restrict the working hours of the employee, who works on several jobs, the employer should be provided by a written notice from the employee on the involvement in part-time work.
- Remarkably, the legislator has saturated the Law with a lot of labor guarantees to the different types of employees, stipulating and amending several provisions on the employment regulations of the pregnant women and young mothers, minors, persons with disabilities and the employees of the retirement age.

CURRENT ISSUES OF LABOUR MIGRATION IN BELARUS



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Concept and types of labour migration:

- Labour migration is the relocation of the workforce to other territories with the purpose of employment.
- Belarusian labour law distinguishes internal and external migration, workers-immigrants and workers-emigrants.
- Internal labour migration is the moving of citizens and people without citizenship for employment within the borders of the permanent residence state.
- External labour migration is the departure of citizens of Belarus to a foreign state and the entry of foreigners to Belarus for employment.
- CIS Convention on the legal status of workers-migrants and their family members also determines frontier migrants and seasonal migrants.
- Frontier migrants are those who work in a state border area different from the permanent residence state, they return to the permanent residence state at least once a week.
Seasonal migrants are those, whose work is related to seasonal circumstances and can be done only during a certain period.
- The International Organisation for Migration specified: the labour migration level in Belarus is stable year after year. The state has accepted mainly the citizens of Russia, Ukraine, China, Kazakhstan, Uzbekistan, and Turkey which is based on the geopolitical situation in the region and investment projects in Belarus. Belarusians move to Russia, Poland, Lithuania, the Czech Republic, and the USA for labour migration.

Belarusian migration legislation and international partnership in labour migration:

Labour migration in Belarus is regulated by the Law of the Republic of Belarus of December 30, 2010, No. 225-Z “On external labour migration” (the Law on external labour migration) and the Law of the Republic of Belarus of January 4, 2010, No. 105-Z “On the legal status of foreigners and people without citizenship in the Republic of Belarus”.

- Belarus is a member of the International Organisation for Migration since 1994 and is a party to multiple bilateral and multilateral international treaties.
- The state has not signed the International Labour Organisation conventions. However, it ratified:
 - CIS Convention on the legal status of workers-migrants and their family members (signed in Chişinău (Moldova) on November 14, 2008);
 - CIS Convention on the Partnership in labour migration and workers-migrants’ social protection (signed in Moscow (Russia) on April 15, 1994).
- Labour migration issues are also adjusted in Section 26 of the EAEU Treaty, which specifies the cooperation of the states-EAEU members in labour migration, workers-migrants’ rights and obligations.

Permissions for migrants’ employment.

- The employment of workers-immigrants in Belarus is possible if the vacancies cannot be taken by the citizens of Belarus and foreigners permanently residing in Belarus.



The immigrants' labour activity in Belarus differs from others by the employer's necessity to have the following permissions:

- the permission for attracting foreign labor force (permission).



This permission is required if the employer hires more than 10 foreigners, or the total amount of such employees in a company becomes more than 10 foreigners. Calculating the workers-migrants, the employer should not consider the highly qualified workers, the company's heads who participated in a company establishment, people not subject to the Law on external labour migration such as migrants who graduated in Belarus and were employed after obtaining a specialty and awarding of qualification. In addition, there is no need to receive permission, if the employer is a High-Tech Park (HTP) resident.

◀ To get permission, the employer should apply documents to the migration authorities.

- The permission is issued considering the conclusion on the possibility of foreigners' employment in Belarus given by the labour, employment, and social protection authority at the place of employer's state registration.

The period for the review of applications by the migration authorities is **15** days.

The permission is valid for 1 year, and this period can be prolonged once upon the employer's application. The employer should apply documents for authorities once again after expiring the permission. - the special permission for employment (**special permission**).

Every foreigner should obtain this permission, except for the following situations: the employer is an HTP resident;

the foreigner is a citizen of

- RUSSIA,
- ARMENIA
- KAZAKHSTAN
- OR KYRGYZSTAN

- the foreigner is not a subject of the Law on external labour migration.

Since July 1, 2023 foreigners who are going to work as car drivers, mechanic-repairman, tractor drivers, seamstresses, electricians, veterinarians, specialist doctors, engineers, nurses, and paramedics are not required to obtain special permission.

The period for the review of applications by the migration authorities is 15 days.

To obtain special permission, the employee should file a request to the migration authorities. Before applying documents to the authorities, the employer should send the information on free workplaces (vacancies) to the labour, employment, and social protection authority at the employer's location within 5 days from the date when the vacancy arises.

- **The special permission is valid for 1 year.**

However, for highly qualified workers 2 years can be set. Migrants can apply for the prolongation of special permission once. To prolong employment relations after the expiration of permission employers should reapply documents to the migration authorities.

The special permission is issued considering the conclusion on the possibility of foreigners' (not having permanent residence permission) employment in Belarus given by the labour, employment, and social protection authority at the place of employer's state registration.

Foreigners can obtain special permissions multiple times for every position (profession).

Workers-migrants' employment.

▶ The employers hire foreigners under the requirements of the Labour Code of the Republic of Belarus.

- 1** The foreigner should provide the documents required by the legislation. There are several special requirements for foreigners though. So, education documents received in a foreign state should be legalised. Nevertheless, the employee can provide an education document without legalisation if this document is issued in the state which signed the international treaty on mutual recognition and equivalence of educational documents and degrees with Belarus. In Belarus, education documents issued by Ukrainian, Georgian, Kazakh, Moldovan, Russian, Azeri, Armenian schools, colleges and universities are recognised without legalisation.
- 2** Belarusian employers must issue an employment history record book consistent with the Belarusian labour law for an immigrant, although they can learn information on a foreigner's work experience using employment history records issued in another state.
- 3** Foreigners who are temporarily staying or temporarily residing in Belarus must sign a contract on compulsory health insurance or a contract on health insurance with the foreign insurance company in case of emergency medical care provided by medical institutions. There is an exception to this rule: certain foreigners are exempt from signing such contracts. They are the citizens of states-CIS members, for whom first aid and emergency medical care in Belarus is free.

Finally, the employment contract signed with a foreigner should regulate the order of amending and terminating this contract in case of the special permission annulment, terms of remote worker movement to Belarus, insurance, and residence in Belarus.

- The employment contract is valid within the special permission period if it is required. Therefore, this contract can be signed only for a certain term. The employment contract should be drafted in Russian or Belarusian and the language clear for the employee.
- Then, the employment contract should be registered within a month after its signing. For this purpose, the employer applies 2 contract copies to the migration authorities.
- HTP residents should not register the employment contract. However, they must inform the authorities on signing such a contract and provide its copy within 3 working days.

Labour migration's legal aspects.

Migrants must follow the legislative requirements of the employment state.

So, they must obtain the temporary residence permission. It is issued for less than 1 year, but for highly qualified workers, 2 years can be set. The decision to issue the temporary residence permission is made by the migration authorities at the place of planned residence within 15 days after applying the documents.

Moreover, foreigners and people without citizenship must receive an exit-entry visa to Belarus from the migration authorities at the place of the employees' residence. The visa is issued within 15 days. However, migrants can request for obtaining the visa in an accelerated (5 days) or immediate (1 day) order. The visa is issued for the period of permanent residence permission validity.

Employer's liability.

The employers can be subject to administrative proceedings based on the violation of the procedure of employment of foreigners and people without citizenship. In this situation, the employers are faced with the risk to get a fine of not more than around **EUR 565,00.**

Migrants' rights protection.

Immigrants have the right to apply to the court of the employment state for their labour rights protection. First-instance court tries the labour disputes involving the workers-migrants within 2 months after the claim receipt by the court. Workers-migrants don't need to pay the state fee for the labour dispute resolution.

LABOR MIGRATION IN KAZAKHSTAN



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Today the dynamics and scale of migration processes in Kazakhstan is one of the important components of the economic development of the country, and in this aspect migration for the purpose of labor activity remains relevant.

According to the demographic statistics of migration of the population of the Republic of Kazakhstan for 2022, arrivals for this year amounted to **17,293** people, of which the main migration exchange of the country took place with the CIS countries. The share of arrivals from CIS countries was **85.9%**.

A large proportion of those arriving in Kazakhstan were Russians, namely in connection with the geopolitical situation in September 2022 about **98,000** Russians entered Kazakhstan, while the number of those leaving is **64.2 thousand**. For the first quarter of 2023, the number of those who arrived was **3,880**, and those who left was **1,733**.

Based on the above data, it can be assumed that the remaining part of the citizens of the Russian Federation who entered the country (more than **30,000** people) were employed in Kazakhstan.

At the same time, as of 1 April 2023, **14,417** foreign nationals were working in the Republic on the basis of permits from local executive bodies.

LABOR PERMIT:

- The main legal act regulating employer-employee relations in the territory of the Republic of Kazakhstan is the Labor Code. According to Article 26 of the Labor Code, It is not allowed to enter into an employment contract: with foreigners and stateless persons temporarily staying in the territory of the Republic of Kazakhstan, until the employer receives permission from the local executive body to attract foreign labor, or until a foreign employee receives a certificate of compliance with qualifications for self-employment or a permit for a labor immigrant issued in accordance with the procedure determined by the authorized body on migration issues, or without compliance with restrictions or exemptions established by the laws of the Republic of Kazakhstan;

1. Obtaining a permit to a labor immigrant.

- A permit to a labor immigrant is issued if he or she is employed by an individual. This permit is issued and renewed through the application to the non-profit joint-stock company "State Corporation "Government for Citizens" NJSC by submitting the necessary package of documents.
- The local executive body issues permits within the quota allocated by the authorized body for employment issues territorially, by regions of the country.

3. Obtaining permits to employers for the engagement of foreign labour.

- To obtain a permits to employers for the engagement of foreign labour, the employer or his authorized representative must apply to the local executive body at the place of employment of foreign labour with an application and the required documents attached to it.
- Engagement of foreign labor in Kazakhstan is allowed only within the quota. The government establishes the number of foreign workers attracted to work in Kazakhstan each year. Thus, employers need to apply for the quota in the coming year well in advance.

2. Obtaining certificate of qualification for independent employment.

- Certificate of qualification for independent employment (hereinafter referred to as the Certificate) – document of the established form, issued in the manner, determined by the authorized body on employment of population, to an alien or a stateless person, according to qualification requirements and level of education, for self-employment in the Republic of Kazakhstan in occupations, demanded in economic priority sectors (types of economic activities).
- A foreign citizen is required to submit an application in order to obtain this certificate. The application and required documents are submitted through e-government websites: www.egov.kz, www.elicense.kz. However, to send the application to the government portal, you must first obtain an Individual Identification Number (IIN), which is required to obtain an Electronic Digital Signature (EDS).

THE PROCEDURE FOR OBTAINING A RESIDENCE PERMIT.

It is important to note that foreign nationals can also obtain a document confirming the right of a foreigner for permanent residence in the Republic of Kazakhstan - it is a residence permit. Due to which they can carry out labor activities without obtaining any permits. In order to obtain a residence permit, it is necessary to obtain a permanent residence permit. The permit is issued in the territorial police departments. The main requirement for those arriving in the Republic of Kazakhstan and wishing to obtain a residence permit is proof of their ability to pay.

In order to obtain a residence permit, you must personally submit all documents to the authorized state agency and obtain a permanent residence permit.



Based on the above information, labor migration in Kazakhstan is quite a time-consuming process. It is important to note that under the Agreement of the Eurasian Economic Union of May 29, 2014 (hereinafter - the Treaty), ratified by Kazakhstan, employers and (or) customers of works (services) of a member state have the right to engage in labor activities of workers of member states without regard to restrictions on the protection of national labor market. At the same time, workers of member states do not need to obtain permission to work in the state of employment. Also, according to the Agreement, citizens of a member state arriving for the purpose of work or employment in the territory of another member state, and family members are free from the obligation to register (register) within 30 days from the date of entry.

It can be assumed that migrants from nearby countries, including the Russian Federation, having legislative benefits in the field of labor migration to Kazakhstan, are freely employed, almost at the same level as citizens of Kazakhstan, thus creating healthy competition to the personnel market in the country.

Labor migration plays an important role in the global economic development of the Republic of Kazakhstan. Issues related to compliance with labor legislation require special attention and regulation. Compliance with labor legislation is an integral part of successful migration, and migrants should be informed about the rules and requirements, given their status and employment.

ACTUAL ISSUES OF LABOUR MIGRATION IN THE KYRGYZ REPUBLIC



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In the contemporary period, there is an increasing demand for qualified specialists in different sectors of the economy of the Kyrgyz Republic. Taking into consideration that various legal issues surround the movement of the labor force across borders, one of the critical aspects of labor migration is confined within its legal framework. This article aims to explore the concept of labor migration and provide the main directions of its legal regulation within the Kyrgyz Republic. Understanding these aspects is vital for investors, employers, and individuals involved in labor migration to effectively manage and address its challenges and opportunities.

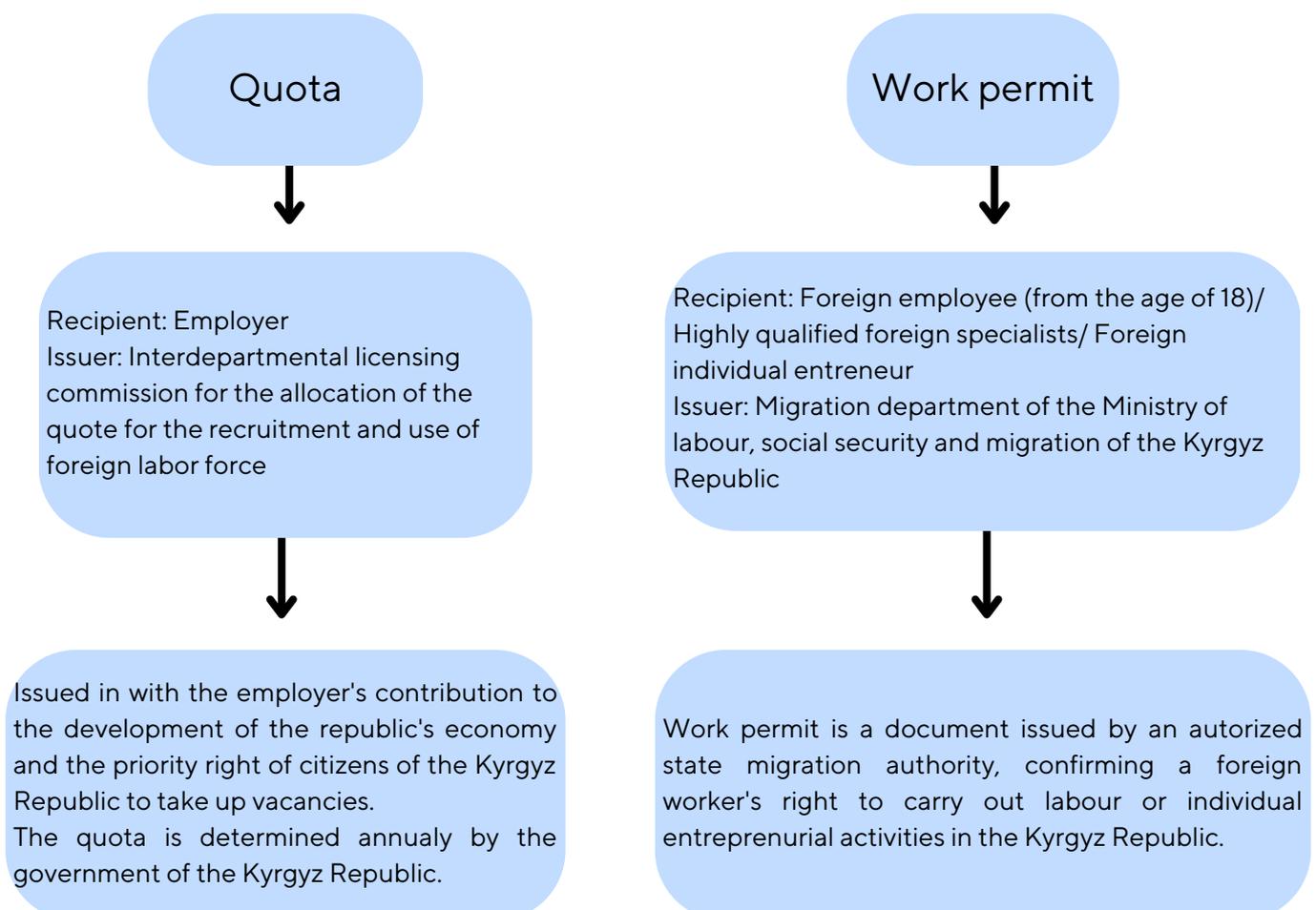
1. General terms and legal framework in labor migration

Migration legislation and international treaties are crucial for the effective regulation of labor migration. The legal framework governing labor migration outlines the rights and responsibilities of migrants and the host country, as well as prescribes specific procedural rules to safeguard the entire process. When addressing the matter of labor migration, the legal framework primarily consists of the following legal acts:

- Law of the Kyrgyz Republic dated January 13, 2006 N 4 "On external labor migration";
- Regulations on the procedure for labor activities by foreign citizens and stateless persons on the territory of the Kyrgyz Republic (to the Resolution No. 175 of the Government of the Kyrgyz Republic of 16 April 2019);
- Instruction on the procedure for processing and issuing visas to the Kyrgyz Republic (to the Resolution of the Government of the Kyrgyz Republic of 15 March 2017 No. 155)
- Treaty on the Eurasian Economic Union of 29 May 2014;

As a general rule, foreign nationals have the right to work in the Kyrgyz Republic on the basis of a legally obtained work permit. Similarly, employers in the Kyrgyz Republic have the right to employ foreign nationals based on quotas for attracting foreign labor (hereinafter referred to as "quota"). The process of obtaining a work permit and quota requires compliance with legal requirements, ensuring that migrants enter the labor market legally. The authorized state body responsible for the distribution of work permits and quotas is the Ministry of labor, social security, and migration of the Kyrgyz Republic and its respective divisions.

Quotas for attracting foreign labor are issued directly to employers by the interdepartmental licensing commission. The quota determines the maximum number of foreign nationals or stateless persons allowed to enter the Kyrgyz Republic for the purpose of carrying out labor activities. Work permits play a central role in labor migration, as they confirm a foreign employee's right to engage in labor activities within the Kyrgyz labor market. Work permits are issued directly to migrant workers or foreign individual entrepreneurs by the migration department of the Ministry of labor, social security and migration of the Kyrgyz Republic.





The requirement to obtain a work permit and quota is not universal, and its application depends on the type of labor migration and the status of the foreign employee. The current legislation of the Kyrgyz Republic distinguishes between two types of labor migration: external labor migration and pendular (border) labor migration. Each type has its own set of regulations and requirements.



External labor migration refers to the entry of foreign nationals and stateless individuals into the territory of the Kyrgyz Republic for the purpose of engaging in labor activities. This type of migration involves crossing national borders on a permanent basis and subsequently requires obtaining a work permit and quota.



On the other hand, pendular (border) labor migration refers to the entry of citizens from neighboring states into the territory of the Kyrgyz Republic to perform labor activities while maintaining permanent residence in their home state. Unlike external labor migration, pendular (border) labor migration does not require obtaining a quota and work permit. This exemption exists because cross-border migrant employees carry out their labor activities based on a self-employment patent.



It is important to emphasize that the Kyrgyz Republic is a full member of the Eurasian Economic Union (hereinafter "EAEU"). Thus, by virtue of the Treaty on Accession to the EAEU ratified by the Kyrgyz Republic, citizens of EAEU member states are exempt from obtaining work permits in the Kyrgyz Republic. Additionally, employers are entitled to hire citizens of EAEU member states without being subject to national labor market protection restrictions, i.e. without obtaining quotas.



Therefore, both citizens of EAEU member states and pendular (border) labor migrants are exempt from the requirements to obtain work permits and quotas. These exemptions align with the Kyrgyz Republic's commitment to facilitating mobility of particular employees.

2. Classification of employees involved in labor migration

- Various categories of employees are subject to different regulations and possess distinct rights. These regulations govern the duration of work permits, the allocation of quotas, and the relevant financial obligations imposed on employers. By understanding the peculiarities of these regulations, employers can navigate the labor market and ensure compliance with the legal framework.
- Highly qualified foreign specialists hold a unique position within the labor market. Upon the request of their employer, they can obtain a work permit for the duration of their employment contract, ensuring that it does not exceed a period of three years. This work permit is granted outside the labor migration quota, allowing employers to hire specialized talents from abroad without being limited by quota restrictions.
- Foreign individual entrepreneurs, on the other hand, follow a distinct procedure. They receive a work permit for up to one year upon their own application within the labor migration quota. In this case, the issuance of a work permit is based on a patent issued by the relevant Kyrgyz tax authorities. It is important to note that foreign individual entrepreneurs are entitled to conduct entrepreneurial activities only at the location specified in the work permit. If a foreign individual entrepreneur wishes to engage in entrepreneurial activities at a different location, they must obtain a new work permit for that specific location.
- Other foreign employees can also obtain a work permit within the labor migration quota, but the duration is limited to one year. In order to maintain a balance within the labor market, the current legislation of the Kyrgyz Republic imposes a rule that the number of foreign specialists shall not exceed 20 percent of the total labor force in a particular economic entity. If the quota limit is exceeded and foreign specialists constitute more than 20 percent of the total labor force, the employer is required to pay a multiple state duty for each foreign specialist exceeding the quota limit.

3. Procedure of obtaining quota and work permit

It is necessary to underline that the process of acquiring a quota and work permit is closely connected to the visa application process. The general procedure is as follows:

1.

Obtaining a quota
for attracting foreign
labor

2.

Obtaining an
electronic work visa
to enter the territory
of the Kyrgyz
Republic

3.

Obtaining a work
permit

4.

Extension of the
electronic work visa
for the duration of
the work permit

- Currently, all the aforementioned procedures can be completed online. The required documents for obtaining a quota, work permit, and visa can be uploaded and processed electronically. This shift to online platforms has facilitated administrative procedures, offering a convenient and time-efficient approach for both applicants and relevant government authorities. Electronic documents hold the same status as official documents and include a readable quick response (QR) code. The specific set of required documents varies depending on the type of foreign employee. The following is a list of the necessary documents to date of the current article:

	Obtaining a quota for attracting foreign labor	Obtaining an electronic work visa + Extension of the electronic work visa for the duration of the work permit	Obtaining a work permit
1. Ordinary foreign employees	<ul style="list-style-type: none"> - Application for quota; - Notarized copy of the certificate of state registration of a legal entity or individual; <ul style="list-style-type: none"> - In the event of conducting licensed activities, a copy of the relevant license; - Officially approved staffing schedule providing details of all employees, including personal information (surname, first name, patronymic, passport number), and information on existing job vacancies. 	<ul style="list-style-type: none"> - Application for visa; - Notarized translation of the identification document of a foreign national; - Copies of constituent and registration documents of a legal entity (employer); - Certificate from the tax authority on absence of tax arrears and insurance contributions arrears (employer); - Work permit (in the stage of visa extension). 	<ul style="list-style-type: none"> - Application for work permit; - Notarized translation of the identification document of a foreign national, with a valid visa or registration; - Notarized translation of a diploma on education (for foreign employees in the field of education, medicine and pharmaceuticals); - Medical report on the HIV antibody testing, issued by the Republican AIDS Centre; - Two color matt photographs.
2. Highly qualified foreign specialists	N.A	Corresponding to № 1	Corresponding to №1 + Employment contract, indicating the amount of salary or remuneration (for a highly qualified foreign specialist).
3. Foreign individual entrepreneurs	N.A	<ul style="list-style-type: none"> - Personal application by an applicant who intends to carry out individual entrepreneurial activities in the Kyrgyz Republic; - Notarized translation of the identification document of a foreign national. 	Corresponding to №1 + Copy of a valid patent, with advance payment for 3 months, certified by the Tax Office of the Kyrgyz Republic (for foreign individual entrepreneurs);

In addition, when conducting the process of acquiring a quota, work permit and visa application processes, it is important to note the following aspects:

- ✓ The process of obtaining a work permit requires the employee to undergo a medical examination and obtain a medical certificate for HIV antibody testing from the Republican AIDS Centre. This certificate should be attached to the work permit application;
- ✓ Access to the website for submitting documents for acquisition of work permit is granted upon crossing the border of the Kyrgyz Republic;
- ✓ The work permit is granted after the payment of the prescribed state fee;
- ✓ A work visa (type "W") is issued to the applicant for the purpose of obtaining a work permit or carrying out individual entrepreneurial activities in the territory of the Kyrgyz Republic. This visa entitles the applicant to enter the territory of the Kyrgyz Republic for up to 60 days, without the right to carry out labor or self-employment activities. When obtaining a work permit, a work visa (type "W") is issued to the applicant - for the duration of the work permit, but for no longer than 1 year.
- ✓ In the event that the foreign employee holds another type of visa, it is necessary to invalidate it prior to application for work visa.

In conclusion, labor migration is a significant and evolving topic in the Kyrgyz Republic. The country's legislation and international treaties play a crucial role in regulating and managing labor migration processes. Various categories of employees are subject to different regulations and possess distinct rights, which aim to balance the labor market and protect the interests of both migrants and the host country. The process of obtaining work permits, quotas, and visas has been facilitated through the use of electronic platforms, making it more convenient and efficient for applicants and relevant authorities. The Kyrgyz Republic's membership in the Eurasian Economic Union also provides exemptions and benefits for citizens of member states.

KEY LEGAL ASPECTS OF LABOR MIGRATION IN THE REPUBLIC OF UZBEKISTAN



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Labor migration is a significant driver of global economic development, as millions of people relocate to other countries in search of improved work opportunities and living conditions. However, this phenomenon gives rise to complex legal issues that necessitate attention and regulation. Compliance with legislation is a key aspect of labor migration, requiring migrants to be well-informed about the rules and requirements governing their status and employment in the host country. This article will examine the key legal aspects of labor migration for foreign citizens and stateless persons (hereinafter referred to as “foreign citizens”) in the Republic of Uzbekistan. The focus will be on the procedures for obtaining work permits, the legislative requirements that migrants need to adhere to, and important considerations related to working conditions, wages, and taxation.

An overview of labor law requirements

The main regulatory act governing the relationship between employers and employees in the Republic of Uzbekistan is the Labor Code. Individual labor relations are governed by specific acts of labor legislation. According to Article 11 of the Labor Code, the rules established by labor legislation in Uzbekistan apply to labor relations involving foreign citizens. In order to be recognized as employees, foreign citizens must meet the following criteria: possessing the legal capacity and capability to work, having reached the minimum legal age, and having entered into an employment contract with an employer.

It should be noted that, as per the Law of the Republic of Uzbekistan “On the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Uzbekistan” No. 3PY-692 dated June 5, 2021, foreign citizens cannot be appointed or elected to certain positions or engage in specific types of labor activities if such appointments or engagements are connected to the citizenship of the Republic of Uzbekistan.

Furthermore, Article 30 of the Labor Code states that foreign citizens permanently residing outside Uzbekistan may establish individual labor relations through an employment contract after obtaining a work permit to engage in labor activities within Uzbekistan. This requirement does not apply to foreign citizens permanently residing in Uzbekistan with a valid residence permit. The term of the employment contract with a foreign citizen cannot exceed the term of the work permit. The expiration or annulment of the work permit serves as grounds for terminating the employment contract.

Obtaining work permit

The procedure for issuing work permits to foreign citizens in the Republic of Uzbekistan is regulated by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On the Approval of the Unified Regulation on the Procedures for Issuing Certain Permits through a Special Electronic System” No. 86 dated February 22, 2022. The Agency for External Labor Migration of the Republic of Uzbekistan (referred to as “the Agency”) is the authorized body for issuing work permits.

To obtain a work permit, an application can be submitted:

in person at the Public Services Centers

electronically through the Unified Portal of Interactive Public Services (<https://my.gov.uz/ru/service/270>) or the Electronic Licensing System (<https://license.gov.uz>). The application can be submitted by either the employer (legal entity or individual) or the foreign citizen.

The application should include the following information:

- 1) Full name of the foreign citizen, telephone number, email address, residential address in the Republic of Uzbekistan.
- 2) Education, specialization.
- 3) Name of the company (employer), type of activity, TIN (Taxpayer Identification Number).
- 4) Expected salary, periods of receiving salary, and position.
- 5) Registration periods with migration authorities and citizenship status (if applicable).

The following documents should be attached to the application:

- Copy of the foreign citizen's passport.
- Draft employment contract confirming the initial agreement with the employer regarding the intention and conditions of attracting the foreign citizen to the Republic of Uzbekistan, including the salary amount (bonuses).
- Photograph of the foreign citizen (3x4 cm).
- Documents confirming the qualifications of the foreign citizen.
- Copy of the entry visa for foreigners subject to visa regime (work visa "E," work visa "B-1" and "B-2," official visa "C-3," or other types of visas granted to citizens).
- The Agency reviews the application within 15 working days. A fee of 1 basic calculation value (BCV) is charged for processing the application (UZS 330,000).

In case of a positive result, the fee for issuing a work permit is as follows:

- For highly qualified specialists, teachers, and specialists attracted to work in Presidential schools and higher education institutions: 1 BCV.
- For qualified specialists: 2 BCV (UZS 660,000).
- For doctors: 5 BCV (UZS 1,650,000).
- For other foreign citizens: 30 BCV (UZS 9,900,000).

The validity period of the work permit is:

- For highly qualified and qualified specialists: up to 3 years, with the possibility of unlimited extensions.
- For other foreign citizens: up to 1 year, with the possibility of unlimited extensions

In accordance with the Resolution of the President of the Republic of Uzbekistan "On Measures to Create Favorable Conditions for the Employment of Qualified Specialists from Foreign States in the Territory of the Republic of Uzbekistan" No. ПП-4008 dated November 7, 2018, specific requirements and criteria are established for determining highly qualified and qualified specialists.

HIGHLY QUALIFIED SPECIALISTS SHOULD MEET THE FOLLOWING CRITERIA:

Graduates of higher educational institutions ranked among the top 1,000 in internationally recognized organizations' ratings, as approved by a joint resolution of the Ministry of Higher and Secondary Special Education and the State Inspection for Supervision of Quality in Education under the Cabinet of Ministers of the Republic of Uzbekistan.

Possess at least 5 years of work experience in the declared specialty or a specialty indicated in the diploma.

Employment conditions in the Republic of Uzbekistan should involve receiving a salary (remuneration) of at least the equivalent of \$60,000 per year.

QUALIFIED SPECIALISTS SHOULD MEET THE FOLLOWING CRITERIA:

Have a higher education degree.

Possess at least 5 years of work experience in the declared specialty or a specialty indicated in the diploma.

Employment conditions in the Republic of Uzbekistan should involve receiving a salary (remuneration) of at least the equivalent of \$30,000 per year.

MOREOVER, CERTAIN CATEGORIES OF WORKERS HAVE THE RIGHT TO PERFORM LABOR ACTIVITIES IN THE REPUBLIC OF UZBEKISTAN WITHOUT OBTAINING A WORK PERMIT. THESE CATEGORIES INCLUDE:

1. Foreign citizens who have invested in the Republic of Uzbekistan in an amount not less than 8,500 times the BCV (approximately \$244,000) established in the Republic of Uzbekistan at the time of investment, in the form of acquiring shares and stakes in business companies, as well as establishing a foreign enterprise, for any position within the organization.
2. Teachers and specialists recruited to work in presidential schools, as well as higher education institutions of the Republic of Karakalpakstan, regions, and Tashkent city.
3. Individuals who have obtained a residence permit in the Republic of Uzbekistan.
4. Specialists of IT-Park residents.
5. Employees engaged in remote (online) employment while located in a foreign country.

Regarding the issuance of work permits, there are several conditions and requirements to be met, including:

1. Compliance with legislation on labor, labor protection, employment, and compulsory employer's civil liability insurance.

2. Compliance of the foreign citizen with the legislation of the Republic of Uzbekistan, including non-criminal liability.

3. Notifying the Agency within one week of any changes in the information indicated in the application.

Violation of these requirements may result in the revocation or annulment of the work permit.

LABOR CONDITIONS AND TAXATION

According to labor legislation, foreign citizens enjoy the same rights and labor conditions as citizens of the Republic of Uzbekistan when entering into employment relationships. They enter into fixed-term employment contracts and are entitled to all guarantees provided by the labor legislation of the Republic of Uzbekistan.

As per the Decree of the President of the Republic of Uzbekistan "On Increasing the Sizes of Wages, Pensions, and Benefits" No. УП-45 dated March 28, 2023, starting from May 1, 2023, the minimum monthly wage on the territory of the Republic of Uzbekistan is UZS 980,000 (approximately 85 US dollars).

REGARDING TAXATION, THE TAX CODE STIPULATES THE FOLLOWING TAX RATES FOR INCOME:

- For resident individuals of the Republic of Uzbekistan:

1. Income is subject to taxation at a rate of 12%.
2. Dividends and interest income are taxed at a rate of 5%.

- For non-resident individuals of the Republic of Uzbekistan receiving income from sources within the country:

1. Dividends and interest are taxed at a rate of 10%.
2. Income received under labor contracts (contracts) and civil law contracts, as well as other income, are taxed at a rate of 12%.

TAX RESIDENTS OF THE REPUBLIC OF UZBEKISTAN ARE INDIVIDUALS WHO MEET EITHER OF THE FOLLOWING CONDITIONS:

- Physically present in the Republic of Uzbekistan for a total of more than 183 calendar days during any consecutive 12-month period.
- Present in the Republic of Uzbekistan for a total of fewer than 183 days in the relevant tax period but more than in any other country.

In conclusion, labor migration plays a significant role in global economic development and is of great importance for the Republic of Uzbekistan. However, the legal issues accompanying this process require special attention and regulation. Compliance with labor laws is an integral part of successful migration, and migrants should be aware of the rules and requirements associated with their status and employment. It is important to emphasize that the procedure for obtaining a work permit plays a key role in establishing individual labor relations for foreign citizens in the Republic of Uzbekistan.

DEVELOPMENT OF KAZAKHSTAN-CHINA COOPERATION: VISA ISSUES.



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THE 30-DAYS VISA-FREE REGIME BETWEEN KAZAKHSTAN AND CHINA

As part of the state visit of the President of the Republic of Kazakhstan Kassym-Jomart Tokayev to the People's Republic of China in May 2023, issues of development of comprehensive cooperation in trade, economic, oil and gas, petrochemical, energy, financial, transport and transit, education and science were discussed. During the visit, a number of agreements were signed, including the agreement between the Government of the Republic of Kazakhstan and the Government of the People's Republic of China on mutual exemption from visa requirements.

According to the Decree of the Government of the Republic of Kazakhstan "On the signing of the Agreement between the Government of the Republic of Kazakhstan and the Government of the People's Republic of China on mutual exemption from visa requirements" No. 365 dated May 15, 2023, citizens of both countries with international passports, when entering a neighboring country, are exempt from visa requirements for the implementation of private affairs, tourism, treatment, international transportation, transit, as well as business purposes for entry, exit, transit through the territory of a neighboring state for a period not exceeding 30 (thirty) calendar days from the moment of crossing the state

border, in total 90 (ninety) calendar days within 180 (one hundred and eighty) calendar days.

Thus, it is expected that the signing of the Agreement will give impetus to strengthening close cooperation between the Republic of Kazakhstan and the People's Republic of China.

At the same time, it is important to note that the Ministry of Foreign Affairs of the Republic of Kazakhstan has provided the clarification that the visa-free regime between Kazakhstan and China does not give citizens of the countries the right to work abroad. The visa-free regime applies only to tourist and business trips: the conclusion of contracts, negotiations, the provision of consulting services and other business purposes. It does not provide for the right to work in the territory of the Republic of Kazakhstan.

Therefore, the visa-free regime does not give the right to a foreign citizen to register companies and carry out entrepreneurial activities on the territory of the Republic of Kazakhstan.

As such, to register a legal entity, a foreign citizen must obtain a C5 visa, often referred to as a "business immigrant visa" (hereinafter – the "C5 visa").

BUSINESS IMMIGRANT VISA (C5 VISA)

By virtue of the Law of the Republic of Kazakhstan “On Population Migration” No. 477-IV dated 22.07.2011 (hereinafter - the “Migration Law”), foreign citizens arriving for the purpose of carrying out entrepreneurial activities are recognized as business immigrants.

A business immigrant, within a two-month period from the date of entry into the territory of the Republic of Kazakhstan, is obliged to:

1 Register a commercial organization in the Republic of Kazakhstan or join the membership (shareholders) of commercial organizations operating in the territory of the Republic of Kazakhstan in accordance with the civil legislation of the Republic of Kazakhstan;

2 Contribute in a second-tier bank of the Republic of Kazakhstan an amount of money not less than the minimum amount established by the legislation of the Republic of Kazakhstan, upon registration of a legal entity for the formation of its charter capital.

The C5 visa can be for single and multiple entry. A single-entry C5 visa is issued for up to 90 (ninety) days, and a multiple-entry C5 visa is issued for up to 2 (two) years (there are exceptions, such as for ethnic Kazakhs the C5 visa is issued for up to 3 (three) years). The C5 visa is issued by foreign institutions and the Ministry of Foreign Affairs of the Republic of Kazakhstan. Thus, a foreign citizen, having decided to register a company in the Republic of Kazakhstan, submits a list of necessary documents to a foreign institution, after which he arrives to the Republic of Kazakhstan as a business immigrant.

There are indeed cases when the requirement for obtainment of the C5 visa for performance

of entrepreneurial activities is ignored, and foreign citizens register a limited liability partnership in the Republic of Kazakhstan without obtaining the C5 visa.

Therefore, it is important to note that in such cases, there is always a risk of liquidation of a limited liability partnership due to the fact that a foreign citizen had not have the C5 visa at the time of registration.

THE DIFFERENCE BETWEEN THE WORK VISA (C3 VISA) AND THE C5 VISA

A business immigrant is a person who starts a business, while a labour immigrant is an employee. A work visa of category C3 is issued to persons arriving to the Republic of Kazakhstan for the purpose of carrying out labour activities (e.g. for employment in a company as a head (director of a company, head of a division), specialists (engineers, managers, IT-specialists), etc.). The documents for the C3 visa are submitted by an employer (company) planning to attract a foreign worker, whereas the documents for obtaining the C5 visa are submitted by the applicant himself.

In practice, the difference between two different visa categories might not be usually understood, and, as a result, companies are registered in the Republic of Kazakhstan in which a foreign participant has a C3 visa obtained from a completely different company for the purposes of entering the territory of the Republic of Kazakhstan. It is important to note that if the same foreigner (participant) is the head of a registered legal entity, he does not need a work C3 visa, and the presence of the C5 visa will be sufficient.

We hope that the information above will be useful to clarify the issues raised by Chinese entrepreneurs in relation the newly entered into force 30-days visa-free regime between the Republic of Kazakhstan and the People's Republic of China, as well as the difference between the performance of entrepreneurial and labour activities by Chinese and foreign citizens in the territory of the Republic of Kazakhstan.



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