



EMPLOYMENT LAW GUIDE **2014**



KALIKOVA
ASSOCIATES 
law firm





KALIKOVA &
ASSOCIATES

law firm



EMPLOYMENT LAW GUIDE

This guide provides basic information on key legal issues commonly facing employers and employees in the course of employment such as hiring, work and rest time, salary, termination of employment, etc.

The guide does not contain the detailed or complete information due to its limited scope and does not substitute the Labor Code of the Kyrgyz Republic.

This guide was developed by Kalikova & Associates in co-authorship with Vyacheslav Georgievich Breivo and is available in hardcopy and online at www.k-a.kg in both Russian and English.

CONTENTS

| | |
|--|--------------|
| Section I. Hiring Employees | 6 |
| 1.1. General provisions | 6 |
| 1.2. Documents required for employment | 6 |
| 1.3. Probationary period | 7 |
| Section II. Work and rest time | 7 |
| 2.1. Work time | 7 |
| 2.1.1. Working hours | 7 |
| 2.1.2. Reduced working hours | 8 |
| 2.1.3. Part-time working hours | 8 |
| 2.1.4. Night time working hours | 9 |
| 2.1.5. Overtime working hours | 10 |
| 2.2. Rest time | 10 |
| 2.2.1. Paid annual leave | 10 |
| 2.2.2. Maternity, parental or childcare leave | 12 |
| 2.2.3. Extended and additional paid leaves | 12 |
| 2.2.4. Leaves without pay | 13 |
| 2.3. Disciplinary sanctions | 13 |
| 2.3.1. General provisions | 13 |
| 2.3.2. Appealing against disciplinary sanction | 14 |

| | |
|--|---------------|
| Section III. Salary | 15 |
| 3.1. General provisions | 15 |
| 3.2. Payment of salary to workers engaged in jobs with special working conditions and in multi-skill jobs | 16 |
| 3.3. Payment of salary in bankruptcy | 16 |
| 3.4. Payment of salary during downtime | 16 |
| 3.5. Overtime pay | 17 |
| 3.6. Payment of salary to dual jobholders | 17 |
| 3.7. Payment of salary to workers engaged in outside employment | 17 |
| 3.8. Withholdings from salary | 17 |
| Section IV. Termination of employment | 18 |
| 4.1. General provisions | 18 |
| 4.2. Termination of employment by agreement of parties | 19 |
| 4.3. Termination of employment by employee (resignation) | 19 |
| 4.4. Termination of employment by employer | 19 |
| 4.5. Termination of fixed-term employment | 20 |
| 4.6. Compensations paid to released employees | 21 |
| Section V. Resolution of Labor Disputes | 22 |

Section I. Hiring Employees

1.1. General provisions

When an employee is hired, the employer and the employee enter into an employment agreement in two original copies and the employer issues a hiring order (instruction or resolution). Normally, an employment agreement is executed for an indefinite term. However, a fixed-term employment agreement may be concluded for not more than 5 years depending on the nature of work and working conditions. For example, the indefinite term employment agreements are not allowed for chief executive officers (“CEOs”), deputy chief executive officers (“DCEOs”) and chief financial officers (“CFOs”). It should also be noted that the employee may enter into employment agreements with more than one employer in the event of outside employment, unless this is prohibited by laws of the Kyrgyz Republic, for example, the Public Service Act. The employer should require the employee to familiarize himself with the company’s employment policies (the “Employee Handbook”) upon hire. The employer should also complete a “labor book”, which is a document containing the records of employment, including information on hires, transfers and terminations, indicating the reasons for termination and citing the appropriate articles of the Kyrgyz Labor Code (“KLC”). If an individual is being hired for the first time, the employer has to start the new labor book for such employee.

Residence registration, place of residence and nationality do not matter in hiring employees, except for public officials and state employees.

1.2. Documents required for employment

- a passport or other identity document;
- a labor book;
- a social security card;
- military service records (for those liable to military service and subject to conscription);
- an education certificate;

- a police clearance certificate stating that an individual is clear from any criminal convictions (for those employed in jobs that involve working with people under the age of 18, for public officials and state employees and for officers accountable for damage).

1.3. Probationary period

The employer may establish a probationary period to confirm the employee's suitability for employment. Where a probationary period is to apply, this must be indicated in the employment agreement. Otherwise, the employee shall be deemed hired without undergoing the probationary period. It should be noted that the probationary period may not exceed 3 months for general or 6 months for specific categories of employees (CEOs, CFOs and their deputies). The employer may terminate the employment agreement if the employee fails their probationary period. In such case, the employer must give the employee a 3 day prior written notice stating the reasons for failing probation. The employee shall be deemed to have passed probation if the probationary period expires with the employment agreement not being terminated.

Section II. Work and rest time

2.1. Work time

2.1.1. *Working hours*

Working hours include, among other things, daily working hours, opening and closing hours, break hours. Regular working hours do not exceed 40 hours per week, with some exceptions. Also, the employer and the employee can agree to fewer hours per week which must be stated in the employment agreement. Daily working hours may not exceed 7 for those working 6 days, 40 hours per week. Total working hours are usually calculated on the basis of the monthly working hours.

For employees who work regular working hours, the work on the eve of the public holiday shall end 1 hour earlier. This does not apply to employees who work reduced working hours. Those whose work is of a non-interruptible nature or whose working hours cannot be reduced, shall be entitled to 1 extra hour of rest time or to compensation for working 1 extra hour subject to the employer's consent.

Also, it should be noted that the employer and the employee may agree to a flexible working regime.

2.1.2. Reduced working hours

The laws of the Kyrgyz Republic prescribe reduced working hours for some categories of employees, in particular for:

- employees aged 14 or over but under 18 (24 - 36 hours per week);
- employees engaged in physically demanding jobs or in jobs with harmful or dangerous working conditions;
- employees with disabilities of groups I and II (maximum 36 hours per week)¹.
- employees engaged in intellectually or emotionally demanding jobs (medical practitioners, teachers, etc.)²

2.1.3. Part-time working hours

Part-time working hours may be introduced by the agreement between the employee and the employer. However, the employer is required to allow part-time working at the request of:

- a pregnant female employee;

1 The list of productions, workshops, occupations and positions, as well as the list of jobs with harmful, difficult or dangerous working conditions, entitling employees to a reduced working regime is determined by the KR Government Resolution. The complete list of categories of employees is established by the KR Government Resolution of May 11, 2006.

2 Categories of employees engaged in special jobs and particular number of their working hours shall be determined by the KR Government.

- an employee being a parent (guardian, trustee) of a child under age 14 (a child with disabilities under age 18);
- an employee caring for a sick family member according to the medical certificate.

In such cases, employees are paid in proportion to hours they worked or labor costs they incurred. It is important to remember that employment rights of such employees (leave of absence, social security benefits, etc.) shall not be limited.

Part-time working hours may be introduced as a part-time working week or a part-time working day as the employee may wish.

2.1.4. Night time working hours

If the employee works at night (between 10 pm and 6 am), his working time shall be 1 hour shorter. When assigning the employee to night work, the employer needs to consider a number of factors, including the employee's health condition, age or involvement in non-stop production activities, whereas in case of female employees, the employer should also consider whether they are pregnant or have children under 3 or children with disabilities.

The employer may assign the employees to night work only with their consent and for an extra pay. Unless otherwise provided in the collective agreement, the reduced working hours shall not apply to the following persons:

- employees who normally work reduced hours;
- employees who are hired to work at night (security guards or watchmen, etc.)

Employees under 18 are not allowed to work at night.

2.1.5. Overtime working hours

The employer may assign the employee to work overtime subject to the employee's consent and the appropriate order (instruction). In this case, the employee shall be entitled to extra pay. Overtime work cannot exceed 4 hours in a period of two consecutive days. Also, employees under 18 are not allowed to work overtime.

The employee may engage in dual or outside employment on his own initiative. In case of dual employment, multi-skilling or multiple job-holding with the same employer, a separate employment agreement must be executed with the employee. In case of outside employment, the employee is not required to obtain consent from the main employer. It should be remembered that the number of hours worked in second jobs cannot exceed 4 hours per day and 20 hours per week.

It should be noted that in a number of cases, the employer has the right to require certain employees to work overtime. The list of such employees is established by the collective agreement, the employment agreement or the bylaws of the organization.

2.2. Rest time

2.2.1. Paid annual leave

The employer is entitled to a minimum of 28 calendar days of paid annual leave. The employee can take leave after having worked continuously for 11 months in the first year of employment. The following employees can take leave before the expiration of this 11-month period:

- female employees before or after maternity;
- employees under 18 years of age;
- employees adopting a child under 3 months of age;
- dual jobholders whose leave of absence in the main job falls within the period preceding the expiration of 11 months in their second job;
- in other cases prescribed by laws of the Kyrgyz Republic.

In the subsequent years of employment, the employee shall be free to take leave in full (as well as in advance) at any time according to sequence of leaves (leave schedule) approved by the employer two weeks before the beginning of the new year. In addition, the employer must notify the employee of the upcoming leave at least 2 weeks in advance. Leave pay should be paid at least 3 days before the day of commencement.

The leave may be granted before the expiration of 11 months in proportion to the time worked. The leave may be divided into parts with the written consent of the employee. In such case, the first part of the leave must be at least two calendar weeks long. While on leave, the employee shall retain the right to his position and average salary.

The time on leave is counted as calendar days. If public holidays occur during the leave period, these days will not be included in the leave period and will not be paid.

It is important to remember that the leave record card must be kept for each employee to reflect all data about leaves taken. The leave is documented by the order (instruction, resolution) or the leave record issued by the employer or its authorized person.

The leave can be extended in the following cases:

- in case of temporary disability of the employee;
- in case of performing public duties while on leave if the law prescribes a release from work for this;
- in other cases prescribed by regulatory acts including the collective agreement.

The leave may be postponed both by the employee and by the employer. The leave may be postponed by the employee in the following cases:

- if the employee is not paid his leave pay on time;
- if the employee is notified of the leave less than 2 weeks in advance;

The leave may be postponed by the employer for operational reasons and with the employee's consent. This is allowed in exceptional cases when the grant of the leave to the employee in the current year may adversely affect the company's operations.

Also, the employee who was not granted annual leave does not lose the entitlement to leave or to compensation for all years of unused leave. The leave is granted or the compensation is paid if the employee has worked for at least one month.

2.2.2. Maternity, parental or childcare leave

These types of leaves refer to paid leaves. The employer must grant maternity leave to a female employee upon request and production of a medical certificate. The duration of such leave is 70 calendar days before and 56 calendar days after giving birth. In cases established by labor law, the duration of maternity leave is between 140 and 180 calendar days.

It should be noted that at the employee's request, the employer may grant additional leave without pay to care for a child under 3 years of age. In agreement with the employer, such leave can be provided at any time and for any period. During maternity, parental or childcare leave, the employee may not be dismissed by the employer except in cases provided by labor law of the Kyrgyz Republic and shall retain the right to her position and may return to work at any time.

2.2.3. Extended and additional paid leaves

Extended annual leave (more than 28 calendar days) are granted to certain categories of employees such as public officials, employees under 18 years of age, forestry personnel etc.³

³ The list of productions, jobs, occupations and positions giving the right to extended annual leave is determined by the KR Government Resolution.

Additional paid leaves are granted to the following categories of employees:

- employees engaged in jobs with harmful and(or) dangerous working conditions⁴;
- employees engaged in special jobs (scientists, artists, teachers, etc.)⁵;
- employees working at high-altitude and in remote areas; and in other cases.

The procedure and conditions for granting additional leaves are established by the collective agreement or bylaws of the company.

2.2.4. Leaves without pay

Leave without pay is provided to the employee upon request for family or other good reasons. The period of such leave is determined by agreement between the employer and the employee. Such leave must be granted by the employer in cases provided by law, e.g. birth of a child, registration of marriage, etc.)

The reason for taking leave without pay must be stated in the employee's request. It should be noted that the employer cannot demand the employee to go on leave without pay.

2.3. Disciplinary sanctions

2.3.1. General provisions

If the employee violates workplace discipline the employer may take the following disciplinary sanctions against him:

-
- 4 The list of productions, jobs, occupations and positions giving the right to additional paid leaves for engaging in jobs with harmful and (or) dangerous working conditions, the minimum duration of such leave and conditions for granting it are approved by the Kyrgyz Government.
 - 5 The list of categories of employees eligible for additional annual paid leave for engaging in special job, the minimum duration and conditions for granting such leave are determined by the Kyrgyz Government.

- notice;
- reprimand;
- dismissal.

Before taking disciplinary sanction the employer must request a written explanation from the employee. However, the absence of such explanation is not an obstacle to taking sanction. Disciplinary sanction is imposed for misconduct⁶ within one month from the date of its discovery. This period does not include the time when the employee was on sick or regular leave. Also, one disciplinary sanction can be imposed for one act of misconduct. It cannot be imposed later than 6 months from the date of its occurrence or 1 month after its detection or, based on the findings of inspection, financial or regular audit, later than 2 years after the occurrence of misconduct. The imposition of disciplinary sanction is documented by an order (instruction, resolution). The employee must be requested to familiarize himself with this order and sign the acknowledgment form within three days from the date of issuing the order.

Depriving the employee of any bonus or incentive for violating workplace discipline is not disciplinary sanction. Disciplinary sanction is valid for one year from the date of its imposition. If within this period no more disciplinary sanction is taken against the employee he will be deemed to have no disciplinary record.

Disciplinary sanction may be lifted prematurely upon the initiative of the employer, at the request of the employee or upon the motion of the employee representative bodies.

2.3.2. Appealing against disciplinary sanction

The employee may appeal against disciplinary sanction:

- in court;
- in labor dispute committee;

6 Misconduct means action contradicting the laws of the Kyrgyz Republic.

- in state labor inspectorate;
- in employees representative body.

However, there is no strictly defined order of applying to certain authority. The employee may appeal against sanction within 3 months from the date on which he became aware of this sanction (except dismissal).

Section III. Salary

3.1. General provisions

Salary is paid in the national currency of the Kyrgyz Republic (soms) with its amount being stated in the employment or collective agreement. Salary is paid not less than once a month. If a payday falls on day off or public holiday, salary will be paid on the previous day.

Salary can be paid to the employee at his place of employment or can be remitted to the bank account designated by the employee. Also, salary can be paid to the person designated by the employee under the power of attorney.

The employer must inform the employee in writing about components of his salary, amounts withheld and reasons for withholding them and the amount due.

If the employee works on days off or public holidays, he will be paid two times the normal daily rate of pay, if these days exceed the limits of the normal monthly working time. The following persons are entitled to at least double time rate for working on days off and holidays:

- piece-workers who are paid for the work produced at the double time daily rate;
- time-workers who are paid for the time worked at the double time hourly rate.

In case of late payment of salary, leave pay or other payouts, the employer must pay a default interest to the employee for each calendar day of delay in accordance with Article 157 of the Kyrgyz Labor Code.

3.2. Payment of salary to workers engaged in jobs with special working conditions and in multi-skill jobs

Workers engaged in jobs with special working conditions (physically demanding jobs, jobs with harmful, dangerous and other special working conditions or special climatic conditions) are paid salary at a higher rate⁷.

Multi-skilled workers are paid for the time worked at various jobs at the rates established for the higher skilled job. Piece-workers are paid for the amount of goods (works, services) produced at the established rates.

3.3. Payment of salary in bankruptcy

Under Kyrgyz law, on liquidation or dissolution of a legal entity, personal injury claims are discharged first. Salary and severance pay claims of the workers employed under the employment agreement are discharged second for the period not longer than 3 months.

3.4. Payment of salary during downtime

In case of downtime, the employer must pay the employee at least 2/3 of his salary if downtime occurs through the fault of the employer.

In case of failure to meet standard working time or job duties through the fault of the employer, salary is paid for the time worked but cannot be lower than average salary.

If downtime occurs through the fault of the employee, salary is not paid.

⁷ Payment procedure and amount of salary for working under special conditions as well as the list of the jobs is determined by the Kyrgyz Government.

If downtime occurs for reasons beyond the control of the employer and employee, only 2/3 of the gross salary is paid.

3.5. Overtime pay

Overtime must be paid at a higher rate as follows: at least one and one-half times the employee's regular pay rate for the first two hours worked and at least two times the regular pay rate for the subsequent hours. Higher overtime pay rate may be established by the collective or employment agreement. At the employee's wish, overtime may also be compensated with time off.

It is important to remember that dual employment is not the same as overtime work. Dual jobholders are paid salary for work produced and time worked.

3.6. Payment of salary to dual jobholders

Employees holding dual jobs or positions with the same employer are paid extra pay agreed upon between the employer and the employee but not less than 30% of the pay rate established for the main job or position.

3.7. Payment of salary to workers engaged in outside employment

In case of outside employment, the employee is paid for the work produced outside the hours of work in main job.

3.8. Withholdings from salary

The employer may withhold salary in the following cases:

- if the employee has any outstanding debts to the employer such as:
 - unworked advance against his salary;
 - overpaid amounts due to miscalculation;
 - unspent and unreturned advances for business travels or job transfers due to relocation;

- unused allocations for business needs.

It should be noted that overpaid salary can be recovered from the employee only in case of miscalculation. Other mistakes of the employer including incorrect application of law do not constitute a ground for withholding;

- if the employee is dismissed after having received payouts for annual paid leave and for unworked leave days in the year worked before the end of this working year. The law provides for a number of exceptional cases when any withholdings from salary are not allowed (liquidation of a legal entity, staff reduction, conscription, etc.) Withholdings from salary in compensation for damages caused to the employer through the fault of the employee should be limited to an average salary.

Section IV. Termination of employment

4.1. General provisions

Upon termination of employment, the employer issues an appropriate order or instruction. The employee must familiarize himself with such order or instruction and sign the acknowledgement form. If the order or instruction to terminate the employment agreement cannot be communicated to the employee or the employee refuses to familiarize himself with it and to sign the acknowledgement form, this fact must be recorded in the order (instruction). The reason for termination of the employment agreement must be stated in the labor book in accordance with the wording prescribed by the Kyrgyz Labor Code indicating the appropriate article, section and paragraph of the article thereof.

The employment termination date is the last day of employment of the employee. On this day, the employee is given all payouts due to him and his labor book. If for the reasons beyond control of the employer, the employee is not given his labor book (refusal or absence of the employee), the employer shall give notice to the employee requesting

him to come and take the labor book or shall send it by mail. From the date of giving such notice the employer shall be exempt from liability for delay in issuance of the labor book. At the written request of the employee who has not received the labor book on dismissal, the employer shall issue the labor book within 3 days from the date of request.

4.2. Termination of employment by agreement of parties

Employment may be terminated by written agreement of parties. The party receiving an offer to terminate employment must notify of its decision in writing within 3 days. The agreement to terminate employment may also be annulled by agreement of parties.

4.3. Termination of employment by employee (resignation)

Employment can be terminated at the request of the employee by giving notice to the employer at least 2 weeks in advance. However, the parties may agree to terminate employment earlier than 2 weeks.

The employee may also withdraw his notice of resignation. If the termination date is not stated in the notice, the notice may be withdrawn within 14 days. In certain cases, withdrawal of resignation may not be accepted by the employer⁸.

The employer must terminate employment within the period indicated by the employee if there are good reasons (health condition, attaining the retirement age, enrollment in an educational institution, moving to another location, violation of labor law or collective agreement, etc.).

4.4. Termination of employment by employer

Employment can be terminated by the employer in certain cases; for example, upon liquidation of a legal entity, reduction in force, unsuitability of the employee for his job, etc. (The grounds for dismissal

⁸ For example, this applies to pregnant female employees assigned by the state employment service.

of the employee on the initiative of the employer are listed in Article 83 of the KLC). Upon termination of the employment agreement, the employer must notify the employee in writing of his dismissal within the period established for each particular case. For example, upon liquidation of a legal entity, the employer must notify the employee at least 1 month prior to dismissal. Also, in some cases (reduction in force), the employer must negotiate with the employee representative body (trade union). These cases are described in Article 184 of the KLC.

In the event of reduction in force, unsuitability of the employee for his job due to inadequate qualification or health condition, and in the event of refusal of the employee to continue employment due to material change in the working conditions, the employer may transfer the employee to another position with the employee's consent. It is important to remember that in case of reduction in force, the employee with higher qualification and productivity will be given priority in rehiring. The employee must be given at least one day off per week to look for a job with the right to salary of not less than average pay rate.

4.5. Termination of fixed-term employment

The fixed-term employment agreement is terminated on its expiration date. The agreement is considered extended for an indefinite period if neither party declares its termination on the established date. If the employment agreement is executed for the performance of certain work or for the period of absence of the permanent employee, the date of termination shall be the day on which the work is performed or the permanent employee returns to work. The employment agreement can be terminated early for good reasons (due to disease of the employee, relocation, enrollment in an educational institution, job displacement, etc.)

4.6. Compensations paid to released employees

Upon termination of employment on the initiative of the employer (on certain grounds), the employee is paid severance pay on the date of his dismissal. Thus, severance pay of not less than two average monthly pay rates must be paid upon termination of employment resulting from:

- reduction in force;
- liquidation or dissolution of business;
- termination of the employment agreement with the CEO, DCEO, CFO due to change of ownership.

Severance pay of one average monthly pay rate is paid upon dismissal of the employee resulting from:

- unsuitability of the employee for his job due to health condition,
- call-up of the employee for military service;
- reinstatement of the former employee to his position;
- refusal of the employee to continue employment due to change in material working conditions.

Severance pay may be paid in other cases if provided for by the collective or employment agreement.

Within 10 business days after issuing the order to terminate employment due to redundancy or liquidation of business, the employee must register with the state employment service as a job-seeker. In such case, in addition to severance pay, the employee is paid average pay rate for 2 months for the period of looking for job (during 3 months). Thus, the employee is paid 4 average pay rates.

Section V. Resolution of Labor Disputes

Labor disputes are considered solely by the following bodies:

- labor dispute committees (established in organizations with 10 or more employees);
- labor relations authority;
- courts of general jurisdiction of the Kyrgyz Republic.

The employee may refer the labor dispute to any of these bodies. If there is no labor dispute committee in the organization, the dispute shall be considered by the competent authority or court.

The employee may refer the dispute to the above bodies within 3 months from the date when he became aware of the violation of his right. The disputes over dismissal must be considered within 2 months from the date when the employee familiarized himself with the relevant order or from the date of issuance of the labor book, i.e. the date when he became aware of the violation of his rights. The labor dispute committee considers labor disputes over any matters, except individual labor disputes for which different procedure for consideration of disputes is established by the KLC and other laws.

KALIKOVA
ASSOCIATES &

71 Erkindik Avenue, Bishkek,
720040, Kyrgyz Republic

Phone: +996 (312) 66 60 60, 66 63 63
+996 (312) 66 22 21, 66 22 50

Fax: +996 (312) 66 27 88

E-mail: lawyer@k-a.kg

Website: www.k-a.kg

© Kalikova & Associates Law Firm LLC, 2014.

© V.G. Breivo, 2014

All rights reserved.