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Remote work in Kyrgyzstan (including remote work of foreign workers)

To date, the issue of regulating remote working under the labour legislation of the Kyrgyz Republic is relevant and important. It should be noted that this issue was an pressing long before the current situation and before the pandemic, and subsequent declaration of a state of emergency in the country last year.

The situation in 2020 prompted the Ministry of Labour and Social Development to issue a bill presenting provisions regulating remote working. All of Kyrgyzstan's business communities were interested in and supported this initiative and participated in the development of the document in one way or another. Thus, the Ministry of Labour and Social Development submitted for public discussion the draft Law of the Kyrgyz Republic "On Amendments to the Labour Code of the Kyrgyz Republic" and the draft Resolution of the Government of the Kyrgyz Republic "On the draft Law of the Kyrgyz Republic "On Amendments to the Labour Code of the Kyrgyz Republic" on 4th May 2020. The justification statement declares that the current provisions of the labour legislation do not regulate this issue, but "at present there is an urgent need to regulate remote working of various categories of workers. The amendments provide an opportunity to legally fix the relationship with such workers." However, for all its importance and necessity, this bill remained "on hold". But, since no one has cancelled the importance of this topic, we will consider the proposed draft amendments to the Labour Code.

The bill is designed to regulate the remote working of an employee. First, it supplements the definition of a workplace, which now means a place at which the employee must be present or to which he/she needs to arrive in connection with his/her work and which is directly or indirectly under the control of the employer, except for remote work and home-based work. Previously and now, this definition has carried and threatened the employer and the employee, who have agreed to establish a remote working regime arrangement now, because it ties to the workplace in conjunction with Article 54 of the Labour Code, which regulates the content of the employment contract. Therefore, under the framework of remote working, it is important to decouple the performance of labour duties by the employee from the workplace and define such performance outside the workplace.

The provisions on concluding an employment contract have also been amended. Now the employment contract in written form can be concluded by drawing up one document on paper signed by the employee and the employer, or in the form of an electronic document signed by electronic signatures, or by exchanging electronic documents signed by the employee and the employer with their electronic signatures. That is, starting from the conclusion of an employment contract, the draft law provides for the need to organize communication between the employee and the employer using information and telecommunications networks, including the Internet, to perform work and interaction.

The separate chapter 32, which comes immediately after the chapter on regulating the labour of home-based workers is devoted to features of remote workers' labour regulation.

Labour legislation and its specific provisions concerning the remote workers covers the main scope of regulation. Thus, for example, the employer's obligations to ensure safe working conditions and labour safety of remote workers are covered to a limited extend. The mode of remote working shall be established by the employment contract and the employer's order. The consent or application of the employee is not required to establish the remote work regime in the following cases:

- ▶ the declaration of a state of emergency,
- ▶ proclamation of martial law,
- ▶ emergency situation or

- ▶ the onset of force majeure

In accordance with the proposed provisions, it is necessary to stipulate with the employee working remotely the following conditions in the employment contract:

- ▶ regime of working hours and time off. Unless otherwise stipulated by the employment contract on remote work, the regime of working time and rest time of a remote worker is set by him/her at his/her own discretion;
- ▶ the procedure and conditions for using means of communication and other equipment, software and hardware, information protection tools and other means provided or recommended by the employer;
- ▶ the procedure and conditions for reporting on the work performed;
- ▶ the procedure and conditions for compensation for the use of communication facilities and equipment, software and hardware, information protection tools and other means belonging to the employee;
- ▶ the rules for compensation of other costs which the employee incurs in connection with the performance of remote work.

The termination of an employment contract with the remote worker shall be done based upon the grounds provided by the labour legislation. On the day of termination of the employment contract, the employer shall send to the remote worker a duly executed hard copy of the said order (instructions) by a registered mail with notification. Although in case of getting a remote worker acquainted with the order (instruction) on termination of the remote working employment contract it shall be sent in the form of the electronic document.

The proposed bill will still be further developed and amended, but the main objectives of the employer–employee relationship in remote working are defined and provided already. I would like to stipulate again the importance of the remote working regulation, the need for making amendments and additions to the labour legislation. As it is conditioned by the current tendencies and rapid growth of digital technologies in various spheres of life and production. Recently, the Kyrgyz Republic has made tremendous steps towards the development of digital transformation. Moreover, the government’s policies have been aimed at the digitalization of life.

The adoption of provisions on remote working into the labour legislation will increase the flexibility of the employment, and also the use of digital technologies in labour relations.

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