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TERMINATION OF EMPLOYMENT AGREEMENT DUE TO LACK OF PROFESSIONAL QUALIFICATIONS

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ABSTRACT

In this article, the author, based on the analysis of national legislation and scientific literature, highlights the some issues of termination of the employment agreement due to lack of professional qualifications of employee. In particular, the concepts"lack of qualifications","Non-performance of work duties" were given the definition of authorship and proposals were made to improve the Labor Code of the Republic of Uzbekistan.

KEYWORDS: *Termination Of Employment Agreement (Contract), Lack Of Qualifications, Qualification, Skill, Skill Level, Skill Specialization, Non-Performance Of Work Duties, Capability, Attestation,*

INTRODUCTION

According to Article 176 of the Labor Code of the Republic of Uzbekistan employees must perform their duties honestly and conscientiously. It should be mentioned that simply establishing this rule is insufficient to ensure the quality and completeness of the job performed in a given business. Employees must be educated, as well as have certain professional training, skills, and specialized knowledge, in order for an organization to achieve its objectives. Accordingly, labor law sets out the grounds for termination of an employment contract on the grounds that the employee is unfit for the job he or she is performing.

Article 100 (paragraph 2, part 2) of the Labor Code of the Republic of Uzbekistan stipulates that an employment contract may be terminated due to the state of health of the employee and in case of lack qualifications.

A comprehensive list of grounds for declaring an employee unfit for the job they perform is based on the above two reasons; broad interpretation is not permitted, that is, the employment

contract cannot be terminated on the grounds that the employee is unfit for the job he is performing for reasons other than these two.

Agreeing with the opinion of Russian scientists, we highlight that the dismissal on this basis is caused by reasons related to the personal aspects and qualities of the employee, and this determines the redundancy (uselessness) of the employee for the organization[1]. We also note that this is not related to the employee's culpable behavior[2].

In this case, although the reason for the termination of the employment relations is the inability to perform labor duties,it is not the result of the employee's fault. This has been pointed out by many legal scholars, in particular, the legal scholar M.Yu.Ghasanov explains this situation as follows: "If non-performance or unsatisfactory performance of work obligations is not related to the misconduct, this occurred perhaps due to the inability to perform them properly or the employee's inability to do so, then it is not possible to assess it as a violation of labor duties by the employee, moreover, the employee cannot be held liable for disciplinary action. The employee's inability or incapacity to perform the work tasks assigned to him to the required level may be caused due to various circumstances. Such cases may occur as a result of the lack of the necessary conditions for the proper performance of their duties, the employee's lack of qualifications or the state of health that prevents the employee from performing the duties properly"[3].

Let's look at the essence of the concept of "lack of qualifications".

ILO International Standards for the Classification of Occupations (ISCO-08) defines employee qualification(or skill)as "the ability to carry out the tasks and duties of a given job", and is divided into two groups: the level of qualification determined by the complexity and scope of duties and responsibilities (Skill level);

qualification in the field of required knowledge to work with the machines, tools and materials used in the work and the type of goods and services produced(Skill specialization)[4].

So, we can say that, "Lack of qualification" means that an employee lacks the necessary knowledge, skills, preparedness, and other professional characteristics to accomplish their work obligations, or that they have been unable to learn new skills as job features have changed through time.

In addition, the employment contract concluded with the employee may be terminated on the grounds of insufficient qualification, if it does not have the labor characteristics (business qualities) required to perform labor duties in a quality and qualified manner, notwithstanding the employee has documents on education in the relevant specialty, and trying to perform work duties in a disciplined manner.

For example, an employee who has worked in an enterprise for several years has not been able to master the new software introduced at workand he could not develop the skills to work in this program,this circumstance may be the basis for declaring him unfit for the position for lack of qualifications.

"Non-performance of work duties" is a broader concept, regardless of whether the failure was due to the employee's misconduct or other circumstances (health condition, lack of skills, etc.), it refers to all cases which the labor tasks remained unfulfilled.

It is very important to understand the difference between the failure of the employee to perform work duties as a result of culpable actions (inaction) and the employee is unworthy of the position. It should be noted that failure to perform work duties as a result of irresponsibility, negligence is not a basis for finding an employee “unworthy for the position." Because, in these cases, it is only possible to talk about the unwillingness of the employee to do the job, which has nothing to do with his inability to execute the job. In this case, there is a violation of labor duties by the employee, and therefore the above cases should be considered as a violation of labor discipline. For this, it would be appropriate to apply disciplinary action to the offending employee.

Failure to perform work duties or failure to perform to the required extent is not related to the misconduct,but if they are not performed to the required extent or are due to the employee's lack of ability to do so, then it may not be assessed by the employee as a violation of work duties, moreover, it is not possible to bring him to disciplinary penalty.

Furthermore, only if the employee is unable to accomplish the task that he is obligated to undertake under the employment contract is it permissible to terminate the employee's employment relationship on the basis of incompetence. Because the employee's job is not specified in the employment contract, if an employee is temporarily unable to perform work without his consent due to the need for production or at the employer's initiative at the time of termination, the employment contract with him may not be terminated on the grounds of incapacity for work.

British labor law, as in many instances, establishes only the basic rules on the topic under consideration. In particular, according to Article 98 of the Employment Rights Act (ERA 1996), it is legal to dismiss in connection with an employee's ability or qualifications. In addition to this, both of these qualities must be relevant to the duties performed by the employee in the employment (“relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do”). The third part of this article defines the concepts of "capability" and "qualification". “Capability” refers to a skill, ability (ability), state of health, physical or mental quality (“capability assessed by reference to skill, aptitude, health or any other physical or mental quality”). The term "qualification" refers to the suitability of a position for education, diploma or other scientific, technical or professional qualification(“any degree, diploma or other academic, technical or professional qualification relevant to the position which he held”)[5].

In this regard, when it comes to the legislation of the Republic of Uzbekistan,Paragraph 28 of the Resolution No. 12 of the Plenum of the Supreme Court of Uzbekistan "On the application by courts of the laws governing the termination of the employment contract" (17 April 1998) states that the incompetence of the employee must be substantiated by concrete facts (inspection reports, notification letter from the immediate supervisor, reports, certification documents and other documents confirming the low quality of work, production of defective products, workload and non-compliance with production standards, etc.) proving that the employee is unable to perform the work that must be performed (assigned), and incompetence according to the state of health must also be confirmed by a medical conclusion.

The traditional reasons why an employee is incompetent or unfit for the position he or she holds due to his or her health condition are still present in the legislation of the CIS countries. In

particular, pursuant to paragraphs 3 and 4 of Part 1 of Article 42 of the Labor Code of the Republic of Belarus, the employment contract may be terminated by the employer due to the employee's health condition or lack of qualifications[6]. Belarusian labor law does not require a medical or attestation report to substantiate the reasons for dismissal. The Plenum of the Supreme Court of the Republic of Belarus (No. 2 of March 29, 2001) filled the gap by the Resolution "On some issues of application of labor legislation by the courts". According to it, the condition that the employee is unable or unwilling to perform his duties due to his state of health must be confirmed by a medical report. In addition, the Resolution states that the conclusion of the attestation is one of the proofs that the qualification of the employee is insufficient, and it must be evaluated by the court on the basis of the sum of all the evidence in the case[7].

Also in the legislation of Georgia[8], Ukraine[9] and Turkmenistan[10] the procedure of dismissal of an employee unworthy of the position is determined in the same order. For many CIS countries, the grounds for dismissal were formulated in accordance with the labor legislation of the former USSR and the 1970 Union Republics.

Paragraph 3 of Part 1 of Article 81 of the Labor Code of the Russian Federation, and paragraph 4 of part 1 of Article 52 of the Labor Code of the Republic of Kazakhstan provide terms of termination of the employment contract at the initiative of the employer, if due to insufficient qualification confirmed by the results of attestation, the employees is found incompetent for the position held or the work performed. Article 81 of the Labor Code of the Russian Federation specifies that the procedure for certification should be established by labor legislation and other normative legal acts, including the norms of labor law, as well as local normative documents adopted through taking into account the opinion of the representative body of employees[11]. Article 53 of the Labor Code of the Republic of Kazakhstan specifies that according to the results of the attestation, the dismissal of the employee is carried out in accordance with the decision of the attestation commission, which is attended by a representative of the employee, and the procedure, conditions and periodicity of attestation of employees are determined by the collective agreement or a document issued by the employer[12].

In conclusion, it should be highlighted that our national legislation does not provide an objective justification (types and mechanisms) for determining the "lack of qualification" in the termination of an employment contract due to insufficient qualifications of the employee.

Given the importance of protecting the rights and interests of employees,it is also proposed to determine in the Labor Code of Uzbekistan the terms of the lack of qualifications of the employee through certification, and to include norms on the regulation of the attestation process by local documents.

In addition to the above, it is considered expedient to define in the text of the code the most important priority rules of the process of attestation of employees such as the concept, purpose, principles, types, terms of attestation, types of non-attested employees, rules on obligatory inclusion of a member of the employee representative body in the commission, bases of regular and non-regular attestation, attestation results, etc.

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