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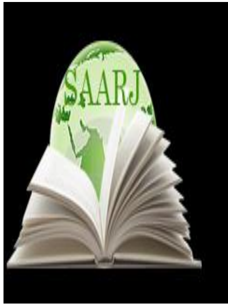

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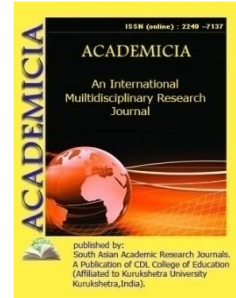


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# A STUDY OF THE PROCEDURE SOME ISSUES OF THE PROCEDURE ON MAKING A LABOUR CONTRACT AND HIRING TO WORK

**Dilfuza Abdullaeva***

*Senior lecturer of the Department of Private Law,
Specialized Branch of Tashkent State University of Law,
UZBEKISTAN
Email id: dilfuza.abdullayeva@yandex.ru

**ABSTRACT**

*The article is devoted to the analysis of the urgent problem of modern labor law: the effectiveness of the security functions of legal norms governing the conclusion of an employment contract and determining the procedure for agreeing and securing the terms of an employment contract by the parties. With the conclusion of an employment contract, its parties enter into new legal relations and become participants in labor relations. It is known that an employment contract is a legal fact that creates an employment relationship between an employer and an employee, therefore, from the moment the employment contract is concluded, the rights and obligations of the employer and employee under this contract arise. Although concluding an employment contract is not a lengthy process, concluding it in violation of the procedure established by law can violate employees' rights and cause many problems for employers. For this reason, the article states that concluding an employment contract in accordance with the rules established by the Labor Code is the responsibility of not only employers, but also employees.*

**KEYWORDS:** *Labor Law, Labor Legislation, Employee, Employer, Labor Contract, Legal Fact.*

## INTRODUCTION

With the conclusion of an employment contract, the parties, entering into new legal relations, become participants in labor relations. It is well known that an employment contract, being a legal fact, the emergence of an employment relationship between an employer and an employee,

therefore, the rights and obligations of both the employer and the employee arise from the conclusion of an employment contract.

Taking into account the importance of an employment contract for establishing employment relations and ensuring the rights and interests of both employers and employees, it can be argued that the current labor legislation clearly establishes the procedure and conditions for concluding an employment contract. The rules for concluding an employment contract are reflected

in §2 of Chapter VI (articles 77-87) of the Labor Code of the Republic of Uzbekistan, which are imperative, that is, an employment contract must be concluded by the parties by mutual agreement and in accordance with the law. At the same time, violations of the law aimed at ensuring the right of employees to freely choose a profession and work will entail the responsibility of employers in the future.

The conclusion of an employment contract requires compliance with all the principles established by the Labor Code of the Republic of Uzbekistan. Legal scholar M.V. Presnyakov notes that the conclusion of an employment contract should be based not only on special principles of labor law, but also on the business qualities of the hired personnel [1].

If you pay attention to part 3 of Article 72 of the Labor Code, you can see that it says that there are additional circumstances before the conclusion of an employment contract (passing a competition, appointment to a position, etc.).

M.Y.Hasanov notes that the list of legal facts before the conclusion of an employment contract provided for in article 72 of the Civil Code is not set out in detail. Based on the content of this norm, we can say that other circumstances are possible before the conclusion of an employment contract [2].

A number of such legal facts, with the exception of passing a competition and being elected to a position, include appointment to a position, sending an employee to work by an authorized state body, obtaining a preliminary employment permit (by foreign citizens and stateless persons), written consent of one of the parents or a person replacing the parent to employ an employee under the age of sixteen.

In accordance with national legislation, when concluding an employment contract, it is necessary to take into account the age of employees. According to article 77 of the Labor Code, persons who have reached the age of 16 will have the opportunity to exercise their constitutional right to work, since this article allows for the employment of persons under the age of 16. Therefore, employers should know the age of the hired employees.

There are several restrictions in the labor legislation regarding the age of employees. According to R.N. Rakhmatullin, the age restrictions of employees established by the legislation can be of two types:

1) General restrictions on all types of work;

2) Special restrictions for specific types of work.

These restrictions depend on the maximum and minimum age of the employee. The minimum age limit is set by labor legislation. And a special age limit is regulated by federal law for certain types of work[3].

To prepare young people for work, it is allowed to hire students of secondary schools, secondary specialized, vocational educational institutions to perform light work that does not harm their health and spiritual and moral development, does not violate the learning process, in their free time – after they reach the age of 15 with the written consent of one of the parents or one of the persons replacing parents.

In addition, the employment of persons under the age of 18 must be carried out in accordance with the requirements of article 241 of the Labor Code, which states that minors should not be allowed to work where unfavorable working conditions may harm the health, safety or morals of this category of workers. The list of such works and the limits of lifting and moving weights for persons under the age of eighteen is established in consultation with representatives of the Ministry of Labor of the Republic of Uzbekistan, the Ministry of Health of the Republic of Uzbekistan, the Council of the Federation of Trade Unions of Uzbekistan and Employers [4].

It should be noted that the OMT Convention No. 138 on the MINIMUM AGE FOR EMPLOYMENT (1973) and the 182 Convention on the PROHIBITION and IMMEDIATE MEASURES FOR THE ELIMINATION of THE WORST FORMS OF CHILD LABOR (1999) [5], ratified by the Republic of Uzbekistan, are directly relevant to the issue under consideration. The provisions of the above conventions are implemented in the Labor legislation of the Republic of Uzbekistan and our state fully complies with these norms.

According to the Russian scientist G.U. Golovina, when concluding an employment contract, it is necessary to take into account not only the age of the employee, but also the state of his health. If the employer imposes unacceptable work on the employee, then the law should establish responsibility for him[6].

Taking into account the correctness of S. Golovina's opinion, according to article 239 of the Labor Code of the Republic of Uzbekistan, all persons under the age of eighteen can be hired only after an initial medical examination and must undergo mandatory medical examination annually until they reach the age of eighteen. It follows from this that the labor rights of minors are fully guaranteed [7].

The process of hiring citizens in our country is one of the most complex processes, and the main means of protecting the rights of citizens is an illegal (unjustified) refusal of employment by employers.

The legal scholar M.Y.Hasanov has repeatedly mentioned this in his scientific works. In his opinion, the inadmissibility of illegal refusal of employment is the most important guarantee of the constitutional right to work for all [8].

Article 78 of the Labor Code lists the circumstances of illegal refusal to hire citizens, which, in our opinion, do not fully cover the rights of employees.

For example, the employer does not specify which persons should be hired. In the Russian Federation, this situation is regulated differently: the law prohibits refusal of employment in a case unrelated to his business qualities [9]. However, the labor legislation of the Republic of Uzbekistan does not say anything about the business qualities of an employee.

In addition, in the resolution of the Plenum of the Supreme Court of the Russian Federation No. 2 of March 24, 2004 the definition of the concept of "business qualities of an employee" is given,

according to which the business qualities of an employee should, in particular, be understood as the ability of an individual to perform a certain labor function, taking into account his professional and qualification qualities (for example, the presence of a certain profession, specialty, qualification), personal qualities of an employee (for example, health status, availability of a certain level of education, work experience in this specialty, in this industry) [10].

Consequently, if the Labor Code of the Republic of Uzbekistan also clearly defines the business qualities of an employee, then some practical problems will find their solution.

Article 78 states that the refusal to hire persons proposed by the employer is considered as an illegal refusal to hire. However, it does not explain the concept of "persons proposed by the employer".

M.Y.Hasanov gives his definition of this concept. In his opinion, in practice there are often cases when an employee's invitation letter is signed by the employer and the seal of the organization is affixed. If an applicant applies to this employer with a request to hire him within the time specified in the letter and submits all the necessary documents for employment, such a letter contains the employer's obligation to hire the proposed employee for a certain specialty and position. In most cases, this letter indicates not only the job function (specialty, qualification or position) offered for the job, but also some other working conditions (salary, structural units, etc.) [11].

In some foreign countries, we can see that the essence of this concept is fixed in the norm of the law.

Part 3 of article 78 of the Labor Code also reveals some misunderstandings. In particular, the article states that in case of refusal to accept a job, the employer must, at the request of the employee, provide a written response within three days, justifying the reason for the refusal to accept a job. But how can a person who is not hired be an employee? For this reason, we consider it necessary to make appropriate amendments to this article.

When applying for a job, the applicant is required to provide the relevant documents provided for in article 80 of the Labor Code. The article also states that it is prohibited to provide documents that are not provided for in legislative documents. However, in practice, the list of documents required from the employer is increasing.

According to the scientist-practitioner D.R.Matrasulov, despite the fact that the current Labor Code does not include such documents as a statement, description, autobiography, photographs, all employers require their submission. Therefore, if these documents are necessary for employment, then it should be proposed to amend the law [12].

In our opinion, the list of documents that employers may need for employment should be strictly fixed in the law with the corresponding amendments to the Labor Code.

The final stage of the employment contract is the execution of the employment contract. According to article 82 of the Labor Code of the Republic of Uzbekistan, employment is carried out on the basis of an employment contract between an employee and an employer. This order must be executed in full accordance with the content of the signed employment contract, and the employee must be notified and a receipt received.

The employment contract comes into force not from the date of issuance of an order by the employer confirming its conclusion, but from the date of its signing by the parties (article 83 of the Labor Code). An employer's order is a way of registering an employee's employment.

Failure to issue an order does not imply the conclusion of a contract, but may cause some problems for the employer. However, there is no provision in the labor legislation on the consequences of non-execution of an order to conclude an employment contract.

Also, article 82 of the Labor Code states that an employee can actually be hired with the consent of the employer and it is considered that he has concluded an employment contract from the date of commencement of work. However, this norm does not establish the obligation of employers to conclude an employment contract in the event of such a situation.

This gap in legislation may lead to further violations of workers' rights. Therefore, employers should avoid this and be responsible for it.

Articles 84-87 of the Labor Code relate to the probationary period before employment, and the norms describe in detail the purpose, conditions, terms, results and other conditions for inclusion in an employment contract.

At the same time, the labor legislation allows citizens to work in several jobs and receive additional income. The procedure for combining and working in several positions and professions is reflected in the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated October 18, 2012 No. 297 "On approval of the Regulations on the principle of combining and working in several professions and positions" [13].

In conclusion, it should be noted that signing an employment contract is not a lengthy process, but failure to comply with the procedures provided for in the law can lead to violations of workers' rights and create problems for employers. In this regard, the conclusion of an employment contract is an obligation not only of employers, but also of employees. In this case, responsibility and attention are required from them. In this regard, it is necessary to eliminate the existing uncertainties in the employment contract and fill in the gaps.

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