



COVID-19, state of emergency, economic crisis. What should the employer in the Kyrgyz Republic pay attention to?

On 25 March 2020, a state of emergency has been introduced in order to protect the lives and health of citizens, their safety and public order and to prevent the spread of coronavirus infection in the cities of Bishkek, Osh and Jalal-Abad as well as Nookat and Kara-Suu districts of Osh province and Suzak district of Jalal-Abad province.¹

The state of emergency shall be effective until 15 April 2020. Curfew and other restrictions, such as temporary suspension of activities for all organizations and enterprises, except those permitted, have been introduced in the abovementioned territories.² The abovementioned changes and restrictions along with the devaluation of the national currency significantly affect the economic activity of business entities and business processes in general, which further affects labour relations.

The employer is faced with the issue of optimizing staff number and payroll fund. The Labour Code of the Kyrgyz Republic³ provides for opportunities such as: reduction in the number of employees or staff size, including in connection with the reorganization of the organization; changes in key employment terms; temporary transfer due to downtime, transition to part-time work or termination of employment altogether by agreement of the parties.

The employer, referring to one or another method of optimization, should carefully study the requirements of labor legislation and meet all conditions to avoid the risk of disputes with employees and the risk of the latter to appeal to the authorized state inspection or judicial authorities. For example, reducing the number of employees or staff size implies termination of the employment with the employee on the employer's initiative, i.e. in this case it is important to comply with all the requirements of the labour law regarding the procedure for termination of the employment on the employer's initiative. Among such requirements are: criteria for determining priority of employees to be remained in the office, time limits for notice, agreement with the representative body (if any), payment of severance pay, compensation.

Issues to consider upon changes in key employment terms and temporary transfer due to downtime include the reasons for the changes, determining the fact of downtime, the availability of notice and the period of notice, the employee's consent. If these methods can be initiated by the employer, a part-time transfer shall be made by agreement between the parties, both at the time of hiring the employee and later.

It is important to note that from the beginning of the emergency situation and later the state of emergency, sending employees on unpaid leave by the employer has been the most common and most

¹ The Decree of the President of the Kyrgyz Republic dated 24 March 2020 No. УП 55, the Decree of the President of the Kyrgyz Republic dated 24 March 2020 No. УП 56, the Decree of the President of the Kyrgyz Republic dated 24 March 2020 No. УП 57;

² Permitted types of business activity are listed in the Order of the Bishkek Commandant's Office dated 30 March 2020 No. 15. Orders issued by the Bishkek Commandant's Office are available at: <http://mvd.gov.kg/comend/bishkek.html>;

³ Labour Code of the Kyrgyz Republic dated 4-th August 2004 No. 106.



used method of optimization in Kyrgyzstan. According to the Article 133 of the Labour Code of the Kyrgyz Republic, unpaid leave can be granted to the employee following his / her application. In other words, unpaid leave is a right of an employee and shall be taken at the initiative of the employee, not the employer. Therefore, forcing employees to take an unpaid leave is a serious violation of labor law akin to forcing employees to terminate employment at the employee's initiative (by his / her own volition). That being said, it is important to note that the President's Decrees on introduction of a state of emergency prohibit to dismiss employees and proceed with termination of employment by an employee's own volition, except for termination of employment on the basis of a good cause. One of the proposals of the Ministry of Labour and Social Development of the Kyrgyz Republic (hereinafter referred to as – the Ministry of Labour) regarding amendments and additions to the Labor Code of the Kyrgyz Republic is the supplement of the Article 82 of the Labour Code of the Kyrgyz Republic with the following wording: "Forcing an employee to resign is not allowed". It can be concluded that the Ministry of Labour once again stresses out the prohibition of such coercion.

Each of the optimization methods that can be applied according to the labour law has its own peculiarities, limitations and procedures. Violation or non-fulfillment of legal requirements may result in inspections by the authorized state inspectorate and / or protracted litigations involving heavy costs to the employer which in turn could have been avoided. Current situation, when many employers have to suspend their activities and make decisions on how to optimize the staff and payroll fund or to transfer employees to remote work (a regime that is not regulated by our labor laws, but only planned to be introduced), forces employers to be more attentive to the employment relations and compliance with relevant requirements.

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