

Employment and employee benefits in Azerbaijan: overview

by Ummi Jalilova, Shabnam Sadigova and Gumru Eyvazova, GRATA

Country Q&A | Published on 03-Feb-2020 | Azerbaijan

A Q&A guide to employment and employee benefits law in Azerbaijan.

The Q&A gives a high level overview of the key practical issues including: employment status; background checks; permissions to work; contractual and implied terms of employment; minimum wages; restrictions on working time; illness and injury; rights of parents and carers; flexible working; data protection; discrimination and harassment; dismissals; resolution of disputes between an employee and employer; redundancies; taxation; employer and parent company liability; employee representation and consultation; consequence of business transfers; intellectual property; restraint of trade agreements; relocation of employees and proposals for reform.

To compare answers across multiple jurisdictions, visit the employment and employee benefits [Country Q&A Tool](#).

The Q&A is part of the global guide to employment and employee benefits law. For a full list of jurisdictional Q&As visit global.practicallaw.com/employment-guide.

Scope of employment regulation

Employment status

Recruitment

Background checks

Permission to work

Restrictions on managers and directors

Regulation of the employment relationship

Minimum wage

Restrictions on working time

Holiday entitlement

Illness and injury of employees

Statutory rights of parents and carers

Continuous periods of employment

Fixed term, part-time and agency workers

Data protection

Discrimination and harassment

Whistleblowers

Termination of employment
Redundancy/layoff
Employee representation and consultation
Consequences of a business transfer
Employer and parent company liability
Employer insolvency
Health and safety obligations
Taxation of employment income
Bonuses
Intellectual property (IP)
Restraint of trade
Relocation of employees
Proposals for reform
Contributor profiles
Umami Jalilova
Shabnam Sadigova
Gumru Eyvazova

Scope of employment regulation

1. Do the main laws that regulate the employment relationship apply to:
 - Foreign nationals working in your jurisdiction?
 - Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

The Labour Code of the Republic of Azerbaijan (Labour Code) provides in Article 5.1 that unless otherwise stipulated by agreements signed by Azerbaijan with other foreign countries and international organisations, the Labour Code applies unconditionally to duly registered and operating workplaces under the control of:

- Foreign countries, their citizens or entities.
- International organisations.

- Stateless persons.
- Stateless persons in the Republic of Azerbaijan registered under Azerbaijani law and doing business under a special permit (licence) (statistics regarding such businesses are not clear however).

Laws applicable to nationals working abroad

Azerbaijani mandatory laws can only apply to nationals who are employed abroad in embassies and consulates of Azerbaijan operating outside the territory of Azerbaijan, or ships sailing in international waters under the Azerbaijani flag (*Article 4, Labour Code*).

Employment status

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of worker

Azerbaijani law distinguishes two categories of worker: employees and contractors/freelancers.

The Labour Code defines employees as individuals who perform their work in accordance with an employment contract.

Employees have a long-term, permanent commitment to a company. Under their employment contract, they must receive and complete work on a regular, ongoing basis.

Contractors/freelancers conclude service agreements for providing specific services to legal entities and individuals in accordance with the relevant provisions of the Civil Code. They have no permanent obligation to the companies that request work from them. Companies seek out contractors to complete set amounts of work as and when they need it, but the contractors can accept or reject requests as they choose. If they do accept the work, they are only obliged to work for the company for as long as that set amount of work takes.

Entitlement to statutory employment rights

Employees who perform their work in accordance with an effective employment contract are entitled to all statutory employment rights defined by the Labour Code and other laws.

Contractors/freelancers are only entitled to legal rights set out in the Civil Code (such as the procedure for terminating a service contract at the client's initiative, see [Question 19](#)).

Time periods

In Azerbaijan, the maximum period for which an individual can be engaged is determined by the Production Calendar, which is approved every year in December by the relevant decision of the Ministry of Labour and Social Protection of the Population (MLSPP). The main principle is that an employee cannot be required to work for any period exceeding the legally determined working hours.

The maximum number of working hours for 2019 is 1,926 for the entire year.

Recruitment

3. Are any grants or incentives available for employing people? Does any information/paperwork need to be filed with the authorities or given to new employees when employing people?

Grants or incentives

No grants or incentives are available for employing people.

Filings

Under the Labour Code, employment agreements enter into force on registration with the MLSPP through the government electronic filing system (<https://www.e-gov.az/>).

When an employee is dismissed as a result of staff downsizing or when a reduction of staff takes place, the employer must officially notify the MLSPP with details of the position, specialisation and salary of the dismissed person(s) (*Article 18.2, Employment Law of the Republic of Azerbaijan (Employment Law)*).

Employers must also notify the MLSPP about any new or available working positions within five days of those positions becoming available indicating the amount of salary being offered. This allows the MLSPP to provide up-to-date vacancy lists based on the information provided by employers.

From 1 January 2019, employment income of up to and including AZN8,000 is taxed at zero percent, however, monthly income subject to social insurance tax up to and including AZN200 is taxed at 25% (3% payable by employee, 22% payable by employer) (*see Question 32*).

Background checks

4. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

The Labour Code does not contain any restrictions on questions that can be asked about an applicant's past, health record or criminal record. The law restricts requesting documents other than those required/permitted by the Labour Code.

Under the Law on Personal Data, information about individual's health and criminal record is considered personal data of a specific category, the collection and processing of which must not be allowed except for the cases indicated in Article 9.7 of that law (see [Question 16](#)).

Permission to work

5. What prior approvals do foreign nationals require to work in your country? What information/paperwork needs to be kept or filed with the authorities when they start work?

Visas

Procedure for obtaining approval. Where a visa is required to enter Azerbaijan, foreign individuals and stateless persons must obtain a visa in compliance with specific orders determined by the Migration Code of the Republic of Azerbaijan (Migration Code).

Foreign individuals or stateless persons can apply for a new visa after they leave Azerbaijan and after expiration of the existing one.

Visas granted to foreign individuals and stateless persons are divided into entry and transit visas. Depending on the number of entries into the country, entry visas can be one-time or multiple-time visas and can be for diplomatic, business or ordinary purposes.

Transit visas are divided into one-time and two-time visas which are issued for foreign individuals for the cases specified in the Article 34 of the Migration Code.

For a work visa, the period of stay in the country must be determined up to 90 days (*Article 28.2, Migration Code*).

For a business visa, the period of stay in the country must be determined up to 180 days (*Article 26.2, Migration Code*).

The documents required for the visa application include the following:

- Passport or other border crossing document (plus notarised copy of the birth certificate, permission of parents or a legal representative and copies of their identification documents for foreign nationals and stateless persons who are under 18, but who are holders of a passport and travel without their parents or legal representatives).
- Two photos that comply with biometric identification requirements.
- Copy of medical insurance certificate.
- Receipt certifying payment of the state fee for visa issuance.
- Application submitted by the party who invites a foreign national or stateless person to the Republic of Azerbaijan, copy of the certificate of state registration (for non-governmental organisations), document certifying the reasons of the invitation (these documents are not required for transit, tourism, official and private visit visas).
- Relevant documents under the Articles 25 to 34 of the Migration Code, depending on the purpose of the travel.

(Article 36, Migration Code.)

Foreigners and stateless persons arriving in Azerbaijan will be able to obtain e-visas through the ASAN Visa system. The period of stay in the country with a single-entry e-visa is up to 30 days, and with a multiple-entry e-visa up to 90 days (*Article 38, Migration Code*). The e-visa is issued within three working days or in an urgent within three hours.

Cost. The fees for obtaining visas are as follows:

- Single entry visa and e-visa: AZN34 (USD 20).
- Multiple entry visa: AZN595 (USD 350).
- Transit visas: AZN34 (USD 20).

(Articles 16.1.6 and 16.1.7, Law on State Duty.)

Time frame. The average time for processing is 15 days for ordinary visas and three business days for e-visas.

Sanctions. Foreign nationals or stateless persons who violate migration laws will be deported from Azerbaijan or fined between AZN300 and AZN400 without deportation (*Article 575, Code on Administrative Offences*).

Permits

Procedure for obtaining approval. Foreign nationals and stateless persons wishing to reside in Azerbaijan must obtain a temporary residence permit. The list of the documents to be submitted by the applicant for temporary residence permit is set out in the Article 46 of the Migration Code.

Cost. The cost for residence permits varies depending on issuance dates and on issuance for adult or minor foreigners and stateless persons.

- Adult foreigners and stateless persons in 15 business days for up to:

- three months: AZN40;
 - six months: AZN80;
 - one year: AZN160;
 - one year and six months: AZN240;
 - two years: AZN320;
 - two years and six months: AZN400;
 - three years: AZN480.
-
- Adult foreigners and stateless persons in 20 business days for up to:
 - three months: AZN30;
 - six months: AZN60;
 - one year: AZN120;
 - one year and six months: AZN180;
 - two years: AZN240;
 - two years and six months: AZN300;
 - three years: AZN360.

(Article 14.8.1, Law on State Duty.)

- Minor foreigners and stateless persons in 15 business days for up to:
 - three months: AZN25;
 - six months: AZN50;
 - one year: AZN100;
 - one year and six months: AZN150;
 - two years: AZN200;
 - two years and six months: AZN250;
 - three years: AZN300.

- Minor foreigners and stateless persons in 20 business days for up to:
 - three months: AZN15;
 - six months: AZN30;

- one year: AZN60;
- one year and six months: AZN90;
- two years: AZN120;
- two years and six months: AZN150;
- three years: AZN180.

Time frame. Permits will be processed within 15 and 20 business days (*see above*).

Sanctions. See above, [Visas: Sanctions](#).

Other

Temporary permit. Foreign nationals and stateless persons wishing to reside temporarily and take paid employment in Azerbaijan must obtain a work permit as well as the temporary residence permit in accordance with the Migration Code.

Cost. This varies according to the time taken:

- Work permit issued in 10 business days for up to:
 - three months: AZN700;
 - six months: AZN900;
 - one year: AZN1400.
- Work permit issued in 15 business days for up to:
 - three months: AZN500;
 - six months: AZN700;
 - one year: AZN1,200.
- Work permit issued in 20 business days:
 - three months: AZN350;
 - six months: AZN600;
 - one year: AZN1,000.

(Article 18.58., Law on State Duty.)

Time frame. The work permit can be processed within 10, 15 and 20 business days.

Sanctions. See above, [Visas: Sanctions](#).

Restrictions on managers and directors

6. Are there any restrictions on who can be a manager or company director?

Age restrictions

The maximum statutory age for employment in public institutions is 65. This term can be extended by the head of the relevant central executive authority for up to one year at a time, to a maximum of five years. However, that maximum five-year extension term can be further extended for employees with specific expertise in science, culture, health and education, as established by the Cabinet of Ministers.

Employment legislation does not provide for any age restrictions in the private sector.

Nationality restrictions

There are no nationality restrictions on who can be manager or company director in private-sector jobs. The nationality factor during the hiring process in the public sector is indicated in the law. Only Azerbaijani citizens can be civil servants (*Article 2.3, Law on Civil Service*).

The service of civil servants employed in various state bodies is regulated by other laws of Azerbaijan relating to the right of Azerbaijani citizens to be recruited to the civil service and to competition and transparency in recruitment, performance and other principles of the civil service and service in these bodies is considered a specific type of civil service.

Other restrictions

The next of kin of an official cannot hold any office under his or her direct subordination, except for the elective offices and other cases provided for by law (*Article 7, Law on Combating Corruption*). Anyone in violation of this requirement must be transferred to another office within 30 days of the finding of that violation, if the violation is not remedied voluntarily. When this is not possible, only one of the persons concerned must be dismissed from his or her office.

Regulation of the employment relationship

7. How is the employment relationship governed and regulated?

Written employment contract

The Labour Code defines an employment contract as a written contract between an employer and an individual employee describing the basic conditions of employment and the rights and obligations of the parties.

Under Article 44.1 of the Labour Code, an employment contract must be executed in writing. Although there is no legal requirement for the agreement to be written in the Azerbaijani language, it is strongly recommended to execute the contract in that language.

Under Article 45, employment contracts can be executed with no specified term (indefinite) or for a fixed period of up to five years (term). Unless the agreement states the term of the employment, it will be considered to be unlimited.

Implied terms

An employment contract becomes valid after registration of that contract with the MLSPP, which can be made using the electronic information system provided by the MLSPP.

Article 43 of the Labour Code provides terms that must be indicated in the employment contract:

- Name and address of the employee and employer.
- Employee's workplace and position.
- Date of execution of the agreement and the date the employment starts.
- Term of the contract.
- Employee's duties.
- Work conditions, such as work and rest time, salary, duration of leave, employment protection, social and other insurance.
- Mutual obligations of the parties under the agreement.
- Creation of conditions for workers to engage in physical training and sports, including rehabilitation and professional-practical exercises in working terms and after work, sports and health activities.
- Number of the certificate of the State Social Insurance (SSIC) of the employee, except those starting employment for the first time.
- Note that the place of work of the employee is the primary or secondary place of work.
- Other agreed terms and conditions.

Collective agreements

Collective agreements are not common in Azerbaijan, however, they are comprehensively regulated by law. Chapter II of the Labour Code governs collective contracts and agreements, setting out the main principles involved, inadmissibility, mandatory terms and so on.

The terms of collective agreements are binding on both the employer and the employee, and on the places of work to which the collective agreements apply (*Article 24, Labour Code*).

8. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

An employment contract can only be amended by the agreement of the parties to that employment contract (*Article 46.6, Labour Code*). An employer cannot unilaterally impose changes on an employee that does not consent to those changes.

Minimum wage

9. Is there a national (or regional) minimum wage?

The minimum wage is a statutory amount equal to a monthly salary paid to a non-skilled employee based on economic and social conditions.

The current minimum monthly wage is AZN250, as determined by the Decree of the President of Azerbaijan dated June 18, 2019 which came into force on 1 September 2019.

Employees have the right to be paid no less than the minimum salary determined by the state without discrimination.

In addition, there is specific uniform tariff schedule regarding salaries in state-funded institutions, confirmed by the relevant decision of the Cabinet of Ministers dated 13 March 2018 which was amended on 7 August 2019 and came into force on 1 September 2019. This document determines the salaries payable to different levels of employees engaged in public institutions.

Restrictions on working time

10. Are there restrictions on working hours? Can an employee opt out on either an individual or collective basis?

Working hours

Daily working hours in Azerbaijan cannot exceed eight hours. Consequently, normal weekly working hours cannot exceed 40 hours.

Reduced working hours apply to certain employees as follows:

- Employees under the age of 16: 24 hours per week.
- Employees aged 16 to 18, category I and II disabled employees, pregnant women and women with a child under the age of one-and-a-half: 36 hours per week.

(Article 91.1, Labour Code.)

Legislation also allows an employee and an employer to agree on part-time work. Shorter working hours, working days and weeks can be established by agreement between the employer and employee on execution of an employment contract.

Part-time work will be defined according to compensation, time spent on the job or by agreement of the parties.

Rest breaks

An employee must be granted a rest and meal break during the working day. The time the break is taken and its duration will be specified by internal work rules, shift schedules, or by an employment contract or collective agreement.

However, under Article 103.4 of the Labour Code, employees must have at least 12 hours rest between workdays. Break and meal times will not be included in working hours. Employees can use rest and meal breaks as they wish, at their own discretion. In jobs where operating conditions make it impossible to grant this break, the employer must give an employee the opportunity to rest and eat during working hours (*Article 1-3.3, Labour Code*).

Shift workers

There are no special restrictions applicable to the working hours and rest breaks for shift workers, which means that the general provisions of the Labour Code apply in those cases.

Holiday entitlement

11. Is there a minimum paid holiday entitlement?

Minimum paid holiday entitlement

Employees are entitled to take paid holiday leave regardless of their position, profession, terms of employment or the effective period of their employment contract.

While an employee is on leave, his/her job, position and average monthly salary must be retained, their employment contract cannot be terminated, and they cannot be disciplined at the employer's initiative.

Base vacation. Under Article 114 of the Labour Code, at least 21 calendar days of paid base vacation must be granted to employees. In addition, certain types of employees are eligible for 30 days of paid base vacation per year as follows:

- Agricultural employees.
- Public officials, managers and experts holding responsible positions at institutions.
- Administrators and administrative support personnel, as well as non-teaching managers of educational institutions, except those governed by special regulations.
- Foremen, instructors, librarians, laboratory technicians, cleaning women, attendants, and art directors at educational institutions.
- Scientific personnel without academic degrees.
- Doctors, mid-level medical personnel, and pharmacists.

Special rules apply to teachers and researchers and other educational employees, disabled employees and minors, war veterans and artistes (*Articles 118 to 121, Labour Code*).

Additional vacation. This applies, for example, to:

- Employees engaged in underground work, in hazardous or arduous occupations or whose occupations involve increased mental and physical stress are eligible for additional leave of at least six days (*Article 115, Labour Code*).
- Employees with at least overall five years' service are eligible for an additional two to six days of leave depending on seniority (*Article 116, Labour Code*).
- Women (or single fathers) with two children under the age of 14 have two additional days while women (or single fathers) with three or more children of this age or with a disabled child under the age of 16 have five additional days' leave. This also applies to adoptive parents (*Article 117, Labour Code*).

Public holidays

The Labour Code defines the following days off in Azerbaijan:

- 1 and 2 January: New Year.
- 8 March: Women's Day.
- 9 May: Victory Day.
- 28 May: Republic Day.
- 15 June: Day of National Salvation of the Azerbaijan People.
- 26 June: Armed Forces Day.
- 9 November: Day of the National Flag of the Republic of Azerbaijan;
- 31 December: Azerbaijan World Solidarity Day.
- 20 January: The day of National Mourning.
- Novruz (five days), Gurban (two days), Ramadan (two days): dates are announced each year by the relevant authority.
- Ballot days.

Illness and injury of employees

12. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

Entitlement to paid time off

Sick pay for temporarily disabled insured employees during the first 14 days of absence from work is paid by the employer, and for subsequent days out of compulsory national social insurance (*Regulations on calculation and payment of obligatory state social compensations for insurance and the benefits paid to temporarily disabled workers at the expense of means of the insurer, 1998*).

Entitlement to paid time off depends on providence of medical certificate, issued in strict accordance with the specific instructions adopted by the resolution of the Cabinet of Ministers dated 1 January 1993.

Entitlement to unpaid time off

Unpaid leave is permitted if an employee needs to take time off to solve urgent family, personal or other social problems, to study, engage in creative scientific work, or due to his/her age or medical condition.

The conditions for unpaid leave are specified in Chapter 20 of the Labour Code. Employees can be granted unpaid leave at the discretion of the parties by mutual agreement of the employer and employee and in the cases provided by the contract, including under the terms of employment contracts, but not more than for six months.

Recovery of sick pay from the state

There is no possibility for an employer to recover sick pay paid by the state, and an employer cannot recover any sick pay it has paid from the state.

Statutory rights of parents and carers

13. What are the statutory rights of employees who are:

- Parents (including maternity, paternity, surrogacy, adoption and parental rights, where applicable)?
- Carers (including those of disabled children and adult dependants)?

Maternity rights

Women are entitled to pregnancy and maternity leave of 126 days, starting 70 calendar days before and ending 56 calendar days after the birth. In the event of abnormal or multiple births, women will be granted 70 days leave after the birth (Article 125.1, Labour Code). This leave is considered as fully paid.

Under Article 125.2 of the Labour Code, women working in industry are entitled to the following pregnancy and maternity leave:

- 140 calendar days for normal childbirth (70 days before birth, 70 days after birth).
- 156 calendar days in the event of abnormal birth (70 calendar days before birth, 86 days after birth).
- 180 calendar days in the event of multiple births (70 days before birth, 110 calendar days after birth).

The average salary for leave, regardless of the year of employment for which it is paid, will be based on the average salary for the preceding 12 calendar months.

Under Article 154 of the Labour Code, the average salary means total daily or monthly amounts paid in cash or cheque by the employer to the employee for work performed while carrying out their duties during the work period in accordance with the employment contract as well as supplements, bonuses, and other payments.

Single mothers of children under three can take partially paid social leave under Article 127.

Paternity rights

Men can take up to 14 days' leave while their wives are on maternity leave. (*Article 130(b), Labour Code*).

Single fathers directly caring of a child up to three years old has the right to take partially paid (*Article 127, Labour Code*).

Surrogacy rights

There are currently no specific provisions concerning surrogacy rights in Azerbaijan.

Adoption rights

Article 126 of the Labour Code establishes a right of a woman who have adopted children under two months of age or who is raising them without adoption to be entitled to the 56 calendar days of social leave specified for after birth, as well as to additional paid leave of two calendar days (if she is a working woman with two children under the age of 14) or five calendar days (in case when she is a woman with three or more children under the age of 14 or with a child with restricted health condition) and a partially-paid social leave until adopted child is three years old.

No specific rights are provided to adoptive parents generally.

Apart from Labour Code, Article 32 of the Law on Children's Rights states that adoption of the child will be allowed in the manner prescribed for his or her benefit by the legislation of the Republic of Azerbaijan. The adopter must have appropriate facilities for the child's normal development and upbringing. Adoption of a child for the purpose of getting personal benefit is prohibited. The privacy of the adopter is protected by the state. Rules of adoption by a foreigner of a citizen of Azerbaijan, as well as adoption of a foreigner by a citizen of Azerbaijan will be determined by mutual agreements between the countries and by the legislation of the Republic of Azerbaijan.

Parental rights

See above, *Maternity rights* and *Paternity rights*.

Continuous periods of employment



14. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Statutory rights created

The concept of continuous employment is not regulated by the law.

Consequences of a transfer of employee

When an employee is transferred from one entity to another, his/her employment contract will be ceased and he/she will enter into a new employment contract with the company to which he/she is transferred.

Fixed term, part-time and agency workers

15. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

Temporary workers

A temporary employment contract is made for a period agreed between the parties. A term employment contract (*see Question 7*) will be terminated on its expiration. If employment continues after the term expires and neither party demands termination of the contract within a week after its expiration, the employment contract will be considered to have been renewed on the previous terms.

Agency workers

The rights and obligations of agency workers are not regulated by the Labour Code, as they are not considered to be employees of the entity. Individuals in Azerbaijan are free to conclude service agreements with legal entities and other individuals in accordance with the relevant provisions of the Civil Code.

Part-time workers

Part-time workers' conditions are set out in Article 94 of the Labour Code which states that there must be no limitation on the employment rights of part-time employees as defined by the Labour Code or in the employment contract.

Data protection

16. Are there any requirements protecting employee privacy or personal data? If so, what are an employer's obligations?

Employees' data protection rights

Personal data is regulated by Personal Data Law. Article 8.1. of the Personal Data Law states that collection and processing of personal data about any person is only permitted with the written consent of the subject entity (individual), including consent in the form of electronic document with reinforced electronic signature or on the basis of written data submitted by him/her.

Employees' rights include the rights to:

- Obtain information on the availability and sources of his/her personal data from the owner or operator of the information system and require proof of the lawfulness of such data.
- Require legal substantiation of collection, processing and transfer to third persons of their personal data and acquire information about the legal consequences of collection, processing and transfer.
- Have knowledge of the content of personal data about him/her accumulated in the information system.
- Be told the purpose of collection and processing of their personal data, the terms, processing methods and people allowed to see their personal data.
- Require alteration or deletion of any stored personal data about him/her and request transfer of that data to the archive, except for cases provided for in legislation.
- Require a prohibition on collection and processing of personal data about him/her or protection of such data already collected and other rights as they set out in Article 7 of the Personal Data Law.

(Article 7.1, Law on Personal Data.)

They also enjoy other rights set out in the current laws of Azerbaijan.

The subject of the personal data is entitled to object against the collection and processing of data except where it is mandatory by law. Where an objection is received, the employer/operator of the system must suspend the collection/processing of the data.

Where the rights of the data subject are breached as a result of illegal collection and processing and the (employer) has failed to ensure their protection or comply with legal requirements, he/she can complain to the relevant executive authority or to the court and to require, through court proceedings, reimbursement of moral and material damage caused *(Article 7.4, Law on Personal Data)*.

Employers' data protection obligations

Employers' data protection obligations are covered by Articles 8 to 14 of the Law on Personal Data (which govern the collection/processing of such data by any owner/operator) and include the following:

- Employees' personal data can only be collected or processed with the subject's written consent (*Article 8, Law on Personal Data*) and in accordance with his/her rights under Article 7.
- The data can only be collected or processed for legitimate purposes which must be communicated to the subject and by legitimate methods (*Article 9.1, Law on Personal Data*).
- Transfer of employees' personal data is subject to specific legal requirements (*Article 9.10, Law on Personal Data*).
- Certain kinds of personal data cannot be collected or processed except where the law requires (*Article 9.7, Law on Personal Data*).
- Information systems containing/processing personal data must be set up and maintained in accordance with the law (*Article 9.14, Law on Personal Data*).
- Employers are liable for harm caused by the unsafe collection/processing of the personal data (*Article 10.1, Law on Personal Data*).
- The employee must be made aware of certain information about the collection of his/her data (*Article 11.2, Law on Personal Data*).
- The obligations in these articles apply to employers and there are no specific rules for employers.

Discrimination and harassment

17. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from discrimination

The creation of equal opportunities and equal approach to employees, regardless of gender in employment and dismissal matters, is defined as one of the employers' main obligations in the article 12.1 of the Labour Code. The principles of non-discrimination of employees during termination of employment are set out in Article 16.1 of the Labour Code.

Protection from harassment

Protection from harassment is one of the employers' main obligations in Article 12 of the Labour Code and under Article 7.2.5 of the Law on Providing Gender Equality. In addition, employers will bear full financial liability for harm to an employee during his/her employment from sexual harassment.

In an employment dispute relating to damages an employee can apply to a court to claim a remedy within one year of the day on which his/her rights were violated (*Article 296.4, Labour Code*).

If this period has elapsed for good reason, such as the sickness of the claimant, the death of a close relative, or if he/she is on assignment or leave far from his/her place of residence or for objective reasons, the court can waive the time limit and resolve the dispute.

The law defines damage in a broad sense, for example, moral and material damage. Hence, either moral or material damage is considered to be a subject of the employment dispute.

Whistleblowers

18. Do whistleblowers have any protection?

The activity of whistleblowers is not directly regulated by the law of Azerbaijan nor there is a specific definition of such persons. However, anti-corruption legislation permits any employee to provide information specifically on offences relating to corruption. Article 11-2.1 of the Law on Combatting Corruption dated 13 January 2004 and amended on 2 October 2017 ensures state protection of the person submitting information on offences relating to corruption.

Termination of employment

19. What rights do employees have when their employment contract is terminated?

Notice periods

The dismissal notice period for employees depends on their years of service. In a redundancy scenario, an employee must be officially notified by the employer within the relevant period before the employer terminates the employment contract (*Article 77, Labour Code*).

An employee can terminate an employment contract by notifying the employer in writing one calendar month in advance of termination. The employee can terminate his/her employment without giving a month's notice for

specific reasons including being of retirement age, disability, admission to an educational institution, moving to a new place of residence or entering into an employment contract with another employer, or in other cases provided by law (*Article 69, Labour Code*).

Severance payments

On termination of the employment contract on the grounds of liquidation of the enterprise or staff redundancies, an employer must pay an employee as follows, depending on the years of service:

- Less than one year: the amount of the average monthly salary.
- One to five years: at least 1.4 times the average monthly salary.
- Five to ten years: at least 1.7 times the average monthly salary.
- More than ten years: at least twice the average monthly salary.

(*Article 77, Labour Code*.)

If an employment contract is terminated due to the following reasons an employer must pay an employee an allowance equal to twice the average monthly wage:

- A change in terms and conditions of employment.
- The employee is called for military or alternative service.
- The employee cannot perform his/her job for more than six months because of complete and permanent disability (unless the law sets a longer period).

If an employment contract is terminated due to the death of the employee, the heirs of the deceased will receive an allowance equal to three times the average monthly wage.

Procedural requirements for dismissal

The employer must prove the necessity of terminating the employment contract (*Article 71.3, Labour Code*).

Insufficient/inadequate reasons to dismiss an employee are:

- Where there is a personnel reduction, employees with the highest skill ratings (professional qualifications) will be retained. If skill ratings are identical, an employer must retain:
 - members of families of shekhids (martyrs);
 - war veterans;
 - spouses of soldiers and officers;
 - individuals supporting two or more children under the age of 16;
 - individuals disabled by the job or who contracted job-related ailments at that enterprise;

- persons with refugee, displaced like status;
- other employees as stipulated in collective agreements and employment contracts.

(Article 78, Labour Code.)

- The employer is prohibited from terminating the employment contracts of:
 - pregnant women and women or single fathers with a child under age three;
 - employees whose only income source is the enterprise where they work and who are single parents raising children under school age;
 - employees temporarily disabled or who have diabetes or multiple sclerosis;
 - members of trade unions or other political parties;
 - workers with a dependent family member with limited health under 18 years or disabled persons;
 - employment contracts for individuals on vacation or on a business trip or engaged in collective bargaining can only be terminated on the grounds determined in Article 70 of the Labour Code.

(Article 79, Labour Code.)

Special provisions apply in specific circumstances under Articles 67.4, 69.4 and 255 of the Labour Code.

An employer's order to terminate the contract must be signed and authenticated by the employer and a copy given to the employee together with their record book and final payment (compensation for unused leave time due to the employee and other payments).

All the information set out in Article 84.1 of the Labour Code must be contained in the order (decree, decision) terminating an employment contract in the absence of any of which the termination/dismissal order or decision can be declared invalid by the court resolving the employment dispute.

See also [Question 3](#).

20. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection against dismissal

The grounds for dismissal of employees in Azerbaijan is strictly determined in Article 68 of the Labour Code as follows:

- The initiative of one of the parties.
- Expiry of the employment contract.
- A change in terms and conditions of employment.
- Cases related to a change in the ownership of an enterprise (in relation to managers or deputies, senior accountants and other division managers who are fulfilling direct managerial functions).
- Cases not depending on the will of the parties (for example when the employee is called for military or alternative service; the person who held the job previously is reinstated by a legally valid court ruling; the employee`s disability is confirmed by a court decision that has taken legal effect or the employee dies).
- Cases established by the parties in the employment contract.

Article 70 lists the grounds for dismissal at the employer's initiative.

The employer can only terminate an employment agreement on his/her/its own initiative in following cases:

- The enterprise is liquidated.
- There is a personnel cutback.
- A competent body decides that the employee does not have the professional skills for the job he/she holds.
- The employee does not fulfill his/her job description or fails to perform duties without valid reason.
- The employee fails the probation period.
- The employee of the state-funded institutions reaches the limiting age (65 years).

An individual employment contract can be terminated only on one of the grounds described above.

In any case, the employer must prove the necessity of terminating an employment contract and indicate the ground of dismissal in the official order.

Protected employees

Employees whose contract cannot be terminated are:

- Pregnant women and women with children under age three and single fathers raising a child of up to 3 years of age.
- Employees whose only income is from the employment in question and who are single parents of children under school age.
- Employees with temporary disabilities.
- Employees with pancreatic (insular) diabetes or multiple sclerosis.
- Individuals because they are members of trade unions or political parties.
- Workers with dependent family member with limited health under 18 years or disable person of group I.

- Individuals on holiday or a business trip or engaged in collective bargaining cannot be dismissed on the basis of the grounds in Article 70 of the Labour Code.

(Article 79, Labour Code.)

Article 52 of the Labour Code lists employees for whom a probationary period will not apply.

Employees listed in the article 66 of the Labour Code (non-certifiable employees) cannot be dismissed by an employer on the relevant termination ground under the Labour Code.

When there is a personnel reduction, the general rule is that employees with the highest skill ratings (professional qualifications) will be retained. However, under the article 78.2, certain categories of employees are given preference over others if their skill ratings are identical with others (see [Question 19](#)).

Redundancy/layoff

21. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of redundancy/layoff

Idle time. If an employee notifies the employer or supervisor that he/she is idle, he/she will be paid for idle time that was not his/her own fault not less than two-thirds of the standard salary for the relevant pay scale. No pay is due for idle time that is the employee's fault.

Redundancy. A reduction in personnel is one of the permitted grounds for termination of employment by the employer under Article 70 of the Labour Code.

Procedural requirements

Procedural requirements during redundancy are described in [Question 19](#). An employer's order to terminate an employment contract must be signed by the employer and authenticated by the seal of the business. During the last working day, a copy of this order must be given to the employee together with employee's record book and employer's final payment (compensation for unused leave due to the employee and other payments).

Collective redundancies

In relation to a change of ownership, the new owner or its employer is prohibited by law from undertaking any mass termination of employment contracts without first assessing the employees' professional qualifications, ability to perform their tasks and any incompetence that may cause damage to the owner's business (*Article 63.3, Labour Code*).

Mass termination of employment contracts is defined according to the percentage dismissed out of total number of employees (at defined times under Article 63) as follows:

- Between 100 and 500: more than 50%.
- Between 500 and 1,000: more than 40%.
- Over 1,000: more than 30%.

Employee representation and consultation

22. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation

Employees are not automatically entitled to any form of management representation unless they are members of trade unions]

Consultation

Employee representation in Azerbaijan is ensured through trade unions, whose activities are regulated by the Law on Trade Unions. The right to join trade unions or other representative bodies or public organisations is one of the main rights of an employee (*Article 9, Labour Code*). Trade unions protect the labour rights of their members and contribute to the drafting of state occupational policy and to the drafting of legislation on employment and socio-economic issues (*Article 10, Law on Trade Unions*).

Employees must receive at least two months' official notice of the adoption of any new work quotas (*Article 148.2, Labour Code*). Quotas for all employment sectors are determined by the Cabinet of Ministers and will be based on the recommendations of the Trade Unions Association, while quotas within each sector are defined by sector-specific employer organisations with the consent of the relevant trade union.

Where the list of jobs characterised by hazardous working conditions and the specific shortened working hours for employees performing these jobs are not specified in collective contracts, this list will be determined by the employer in consultation with trade unions (*Article 92.2, Labour Code*).

Disciplinary regulations are also developed with the participation of trade unions and will be approved by the Cabinet of Ministers.

Major transactions

Not applicable.

23. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

Associations of trade unions can appeal to the corresponding legislative, executive and court authorities against legislative acts, resolutions and instructions of state bodies which contravene employees' interests and rights (*Article 10, Law on Trade Unions*).

There are three methods of resolution for collective labour disputes:

- A reconciliation commission.
- Mediation.
- Employment arbitration.

Employee action

Under Article 19 of the Law on Trade Unions, trade unions, can organise and hold strikes, meetings, street marches, demonstrations and other mass measures in accordance with the legislation in force and for the achievement of their aims.

Consequences of a business transfer

24. Is there any statutory protection of employees on a business transfer?

Automatic transfer of employees

Employees are automatically transferred with the business. Employees holding managerial positions can be dismissed on a change of ownership (*Article 63, Labour Code*).

Employment contracts signed by and between the former owner and the employees, other than the above, and the terms and conditions of those contracts must be kept in effect by the new owner.

Protection against dismissal

The new owner can only dismiss the existing employees in accordance with the terms of the contracts and with Articles 70, 73 and 75 of the Labour Code.

Mass redundancies on a business transfer are not permitted without the new owner assessing the employees' qualifications, their ability to perform their tasks and any incompetence that may harm the new owner's business.

Harmonisation of employment terms

See above, *Automatic transfer of employees*.

Employer and parent company liability

25. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer liability

Employers and employees are mutually liable for harm or damage caused to each other as stipulated in the Labour Code and relevant regulations (*Article 191, Labour Code*).

In addition, the parties are liable for damage intentionally or negligently caused to one another, provided that:

- The damage is shown to have been caused or the activity or inactivity of the defendant and violates the law.
- There is a reasonable connection between the defendant's unlawful action and the result of this action.

Parent company liability

Not applicable.

Employer insolvency

26. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee rights on insolvency

Where the company has gone into insolvency, priority will be given to paying salaries and social benefits, including payment for unused, paid vacation days.

The employer must make all other payments due to employees up to the day of closure. These payments must be reimbursed to employees in the manner stipulated by bankruptcy laws.

If the employer does not have the material or financial resources to pay, payments will be made by selling company assets or by insurance from the relevant government agency, pursuant to the relevant regulations (*Article 53, Law of the Republic of Azerbaijan No. 604 on Insolvency and bankruptcy dated 23 June 1997, Article 82.1.5., Law of the Republic of Azerbaijan No. 590-IIQ on Banks dated 16 January 2004*).

Health and safety obligations

27. What are an employer's obligations regarding the health and safety of its employees?

Employers must provide a healthy and safe workplace, must monitor dangerous and harmful production factors and provide employees with information on these subjects in a timely manner.

Employers must prepare and implement annual plans to improve working conditions, to ensure occupational safety and to protect employee health.

The law provides for mandatory insurance from work related accidents and/or occupational diseases.

Taxation of employment income

28. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign nationals

Individuals who are tax resident in Azerbaijan are subject to income tax in Azerbaijan (*Article 95, Tax Code*), as follows:

- A tax resident is any individual who meets at least one of the following requirements:
 - who was in the Republic of Azerbaijan for a total of more than 182 days in a calendar year;
 - was in the state service abroad for the Republic of Azerbaijan during the calendar year or within one calendar year;
 - was not resident there for 182 days but who meets the requirements of paragraph 13.2.5.1.

(*Article 13.2.5., Tax Code.*)

Nationals working abroad

Where a citizen of Azerbaijan works abroad, but is still considered to be resident of Azerbaijan, they can effectively claim a "tax credit" on income tax paid in Azerbaijan which has been received from a non-Azerbaijan source (although the amount of credit claimed cannot exceed the amount of tax paid).

See also [Question 29](#).

29. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of taxation on employment income

The general rates of taxation on employment income, which apply to employees who are not working in the oil and gas industry, are as follows:

- Employment income of up to and including AZN8,000: 0%.
- Employment income over AZN8,000: 14% (charged against the amount exceeding AZN8,000).

Social security contributions

Social insurance tax sectors other than the oil and gas industry, starting 1 January 2019, applies to employees for a period of seven years as follows (*Article 14.4, Law on Social Insurance*):

- Monthly income subject to social insurance tax up to and including AZN200: social insurance rate 25% (3% payable by employee, 22% payable by employer).
- Monthly income subject to social insurance tax over AZN200: social insurance rate 25% (AZN6 + 10% of the income over AZN200 payable by employee, AZN44 + 15% of the income over AZN200 payable by employer).

Bonuses

30. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded, whether generally or in particular sectors?

During a year in which the targets in the employment contract are met, to encourage employee productivity and work quality, employees can be paid bonuses and awarded other prizes based on the results of work performed (*Article 157, Labour Code*). It is not, however, a statutory obligation of the employer and there are no any restrictions or guidelines on the amounts that can be awarded in bonuses.

Intellectual property (IP)

31. If employees create IP rights in the course of their employment, who owns the rights?

The exclusive right to use the work belongs to the employer, unless otherwise agreed in the employment agreement (*Article 13, Law on Copyright and Related Rights*).

Restraint of trade

32. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of activities

Restrictive covenants are not regulated by the Labour Code. The employee can work for other employers with the permission of the main employer, if the working times overlap, or without permission of the main employer if the other work is undertaken outside the business hours of the main workplace.

Post-employment restrictive covenants

Not applicable under Azerbaijani law.

Relocation of employees

33. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

Mobility clauses can be included in employment contracts. It is possible to direct the relocation condition to another country, but it must be agreed with the employee beforehand. When employees travel on business and are outside the local jurisdiction or abroad, the job and average salary of the employee must be protected (*Article 179, Labour Code*). Providing assistance to an employee in the case of relocation is not provided for by the legislation and should therefore be agreed between the parties.

Proposals for reform

34. Are there any proposals to reform employment law in your jurisdiction?

For now, there are no proposals suggested by the appropriate state organisations to reform employment law.

Contributor profiles

Ummi Jalilova

GRATA

T 994012 597 48 33

E ujalilova@gratanet.com

W www.gratanet.com

Professional qualifications. Lawyer

Areas of practice. Corporate; employment; contract.

Shabnam Sadigova

GRATA

T +9940125974833

E ssadigova@gratanet.com

W www.gratanet.com

Professional qualifications. Lawyer

Areas of practice. Employment; contract; intellectual property; data privacy; immigration.

Gumru Eyvazova

GRATA

T +9940125974833

E geyvazova@gratanet.com

W www.gratanet.com

END OF DOCUMENT