

Research article

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Legal Regulating Electronic Employment Contracts as a Modern Factor of Integration at International Regional Bodies (Exemplified by EEU, CIS and BRICS States Legislation)



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Abstract

The paper provides an analysis of general regulatory patterns concerning the signing, amendment and termination of electronic employment contracts within the Eurasian Economic Union (EEU), Commonwealth of Independent States (CIS) and BRICS as a trend of deepening integration at these international organizations. The core issue in this area is labor mobility in the context of digitization is not regulated internationally with efficiency. It gives rise to a controversy between the need to optimize labor mobility and a lack of comprehensive international instrument on electronic em-

ployment contract to improve legal regulation for more efficient utilization of human capital. The paper analyzes the legislation on electronic employment contracts in a number of EEU, CIS and BRICS member states to come up with recommendations for improving international legal regulation of electronic employment contracts via the relevant international instrument to be drafted. The authors identify a number of general regulatory patterns characteristic of countries such as Russia, Kazakhstan, Kyrgyzstan, Armenia, Belarus, Azerbaijan, Uzbekistan, China, South Africa, India and Brazil, with their national labor law sharing the following features: possibility of HR electronic document exchange for balance of workers' and employers' interests as enabled by regulations; transparent working conditions; electronic employment contract reporting through the software linked to public authorities' websites, and the use of electronic digital signature to sign contracts. This prevents unauthorized amendment of the terms of outstanding employment contracts and allows to track the time when the relevant rights and duties were assigned. The paper comes up with recommendations for better protection of labor rights and duties through the use of electronic tools to conclude employment contracts such as a bilingual online form.



Keywords

electronic employment contract; Eurasian Economic Union (EEU); Commonwealth of Independent States (CIS); BRICS; integration; labor legislation; international legal instrument; labor rights; workers; employer.

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Background

In the current environment, the CIS, EEU and BRICS states have to ensure a reliable and independent supply of the goods and services they need. This, however, cannot be done without introducing new business organization methods, improving the national labor productivity and expanding cooperation with friendly countries for supply of labor. One should keep an eye not only on technological upgrading of production processes to introduce new generation equipment but also on the observance of labor rights in HR management processes both in Russia and across international organizations involving this country (CIS, EEA, BRICS). As applied to labor, digital tools are important ways of tracking the work process and the time when the relevant rights and duties were assigned.

The impact of digitization on employment in Eurasian countries was studied in a number of aspects by E.E. Orlova [Orlova E.E., 2022: 228–

234]. General development issues of new digital technologies in the BRICS were explored by I.V. Lazanyuk and S.Yu. Revinova [Lazanyuk I.V., Revinova S.Yu., 2019: 208–213.] while I.A. Filippova has studied the links between information society and regulation of labor relations [Filippova I.A., 2020: 162–182], P.V. Soloviev has devoted his studies to changes to labor legislation in the context of digitization [Soloviev P.V., 2023: 32–37] and K.L. Tomashevsky has explored economic impact of digitization in Belarus and Russia and its harmonization at the Eurasian Economic Union [Tomashevsky K.L., 2020: 398–413]. N.N. Morozova [Morozova N.N., 2019: 71–76] has focused on digital employment problems of specific population categories in Belarus and Russia (CIS states), and the aspects of digital economy and gender issues she has researched with V.M. Bondarenko [Bondarenko V.M., Morozova N.N., 2020: 639–643].

The details of transition to electronic employment contracts were explored by A.V. Raut [Raut A.V., 2023: 123–127]. Other studies focused on the basic issues of the underlying electronic form [Potapova N.D., Potapov A.V., 2017: 52–53] and on the prospects of labor rights protection in electronic employment contracts [Sapfirova A.A., 2020: 162–167]; [Sapfirova A.A. 2021: 8–13] including the balance of general and specific provisions that introduced e-document exchange [Perevalov A.G., 2023: 140–144]. Peculiarities of record-keeping in some countries such as Kazakhstan were discussed in a separate study [Temirova A.B., Yusupov S.A., Tolysbaeva M.S., 2021: 196–200].

It is also noteworthy the methods of digital workplace management and labor regulation are constantly evolving, with decision-making based on big data and data mining currently in expansion. One has to accept I. A. Filippova's view that labor law responds to changes resulting from digitization of new communication types [Filippova I.A., 2020: 176]. It would be useful to disseminate the positive regulatory experience of digitization provided that labor rights are observed. As non-typical forms of employment expand, civil law relations tend to substitute for labor relations even if all attributes of the former are in place. Being a basis of labor relations, the employment contract should thus be entered in electronic form since it allows to establish a set of rights, duties and liabilities as well as other terms of employment while preventing unauthorized amendment.

The trend for deeper integration at international regional organizations like EEU, CIS and BRICS is currently obvious. It is equally true for regulation of labor relations that are now formalized worldwide by an electronic

employment contract we regard as a major factor of harmonization of labor legislation at these international organizations.

While not definitely shaped, this emerging trend has multiple forms such as the development of the Work without Borders international system (job search and staff recruitment) at the EEU¹; efforts to develop and implement an international digital platform for remote work within the BRICS²; and adoption of a number of model regulations on digitization within the CIS like the CIS Model Law on Technology Transfer Support and Regulation³, CIS Model Law on Digital Space (Infrastructure and Regulation)⁴, CIS Model Law on Digital Change in Economic Sectors⁵.

Meanwhile, a problem is that while there is no adequate regulation of labor mobility based on the electronic employment contract, common regulatory patterns are observed in this area within the three organizations.

1. Patterns and trends in the legal regulation of an electronic employment contract

The common patterns mentioned point to a need to develop a shared international instrument on the electronic employment contract at these organizations.

These patterns include:

use of e-document exchange by employers to enter into employment contracts;

possible use of public systems to electronically enter into employment contracts;

¹ Work without Borders. International job search and staff recruitment system in the territory of EEU states. Available at: URL: <https://trudvsem.ru/landing-rbg> (accessed: 06.09.2024)

² Gazprom Neft to participate in online recruitment platform to be developed for BRICS. TASS news agency of Russia, 8 April 2024. Available at: URL: <https://tass-ru.turbopages.org/tass.ru/s/ekonomika/20481771> (accessed: 06.09.2024)

³ Annex to CIS Inter-Parliamentary Assembly Resolution No. 55-6 of 14 April 2023. Available at: URL: <https://etalonline.by/document/?regnum=n22300120> (accessed: 06.09.2024)

⁴ Ibid. Resolution No. 55-8. Available at: URL: <https://etalonline.by/document/?regnum=n22300122> (accessed: 06.09.2024)

⁵ Ibid. Resolution No. 55-9. Available at: URL: <https://etalonline.by/document/?regnum=n22300123> (accessed: 06.09.2024)

different status of the electronic signature established to electronically enter into employment contracts;

electronic formalization of amendments to employment contracts;

electronic termination of employment contracts.

It has a sense to analyze these common patterns.

1.1. Use of e-document exchange by employers to enter into employment contracts

The legislation across the CIS, EEA and BRICS enables to an extent the use of e-document exchange to electronically conclude employment contracts. This provision can be envisaged by both the national labor code and the regulations governing employment contracts.

In Russia e-document exchange is enabled by Articles 22.1 and 22.2 of the Labor Code provided electronic communication is agreed between the parties and secured by the worker's electronic signature as necessary.

As for Kyrgyzstan's legal experience, Kyrgyz Republic Law No. 123 "On amending the Labor Code of the Kyrgyz Republic" of 23 December 2022 provides for a possibility to conclude employment contracts electronically in a new wording of Article 58, with Article 360-2 of the Labor Code confirming the use of this form for remote workers. The Labor Code defines e-contracts as electronic instruments signed with electronic digital signature. According to the head of the International Business Council, this will facilitate, for example, "employment of low-mobility individuals, residents of remote areas"⁶. However, no requirements to employers for the use of specific HR document exchange are established by the Labor Code.

In Armenia it was not before 2023 the NA's Standing Commission on Labor and Social Affairs has proposed to discuss the possibility to conclude contracts electronically at the portal of the platform for electronic employment contracts. It is envisaged that a contract will be deemed concluded, once its terms are reviewed and accepted. Meanwhile, fully electronic document exchange was approved by the government in 2009.

⁶ Law for remote work has taken effect in Kyrgyzstan. Vesti.kg — News of Kyrgyzstan. Available at: URL: <https://vesti.kg/obshchestvo/item/108383-vstupil-v-silu-zakon-reguliruyushchij-distantsionnuyu-rabotu-v-kyrgyzstane>. Available at: URL: <https://etalonline.by/document/?regnum=n22300123> (accessed: 06.09.2024)

In Azerbaijan, where the implementation of the Strategic Roadmap for the Development of Telecommunications and Information Technologies⁷ is underway since 2016, e-document exchange for HR management has been introduced, for example, at the Ministry of Economic Development.

Electronic registration of employment contracts was introduced by Law No. 875-IVQD “On Amending the Labor Code of Azerbaijan” of 27 December 2013, with recruitment regulated by a provision requiring to post a notice on outstanding contracts to the information system based on the list of details to be reported⁸.

T. Khalilov and E. Aliyev in their study in digitization has concluded: “Azerbaijan is focused on advancing its digital sector”.⁹ They have underlined digital tools contribute to transparency of employment processes and protection of workers while the labor market needs to adapt to new challenges in the current context. It is planned to adopt electronic employment contracts and abandon the required notice, with hearings on this issue expected in June 2024¹⁰.

In Belarus e-document exchange can be used, for example, for personal file management, with purely electronic form applicable to warnings, worker consents, bylaw reviews, orders, worker applications. Like in Russia, employers are mainly required to have a bylaw for e-document exchange, maintain unambiguous worker identification and e-document integrity.

In Belarus the employment contract, just like the financial liability contract, is entered, extended and amended in the paper form. For these documents to be entered electronically, it is required to have a personal telephone for unambiguous identification of electronic digital signature, as well as a reliable and continuously operating HR document exchange system.

⁷ Government of Azerbaijan. 2016. Strategic Roadmap for the Development of Telecommunications and Information Technologies. Available at: <https://ict.az/en/news/2006> (accessed: 06.09.2024)

⁸ Cabinet of Ministers of Azerbaijan. Resolution No. 183 of 6 June 2014 “On approving the form of the employment contract notice and the rules to post it to the electronic information system, as well as details to be reported by the employer to the Ministry of Taxes following the notice including the rules related to real-time receipt of the posted notice”. Available at: URL: <https://online.zakon.kz/> (accessed: 06.09.2024)

⁹ Available at: https://www.researchgate.net/publication/341733964_Digital_century_new_approaches_to_employment_in_Azerbaijan (accessed: 06.09.2024)

¹⁰ Azerbaijan to Electronically Enter Employment Contracts. Azeri Press Agency. 12 June 2024. Available at: URL: <https://ru.apa.az/sotsium/v-azerbaidzane-trudovye-dogovory-budut-zaklyucatsya-v-elektronnom-vide-575705> (accessed: 06.09.2024)

The recommended model employment contract was amended with regard to the employer's duty to arrange for evaluation of workers and to make sure that job titles match skill reference books and occupational standards¹¹. Thus, the reform of employment contract has not affected its form.

In India two government-led projects ("Made in India" and "Digital India") were launched to bolster digital economic development with active support of the NASSCOM, a non-governmental association of IT companies.

Digitization of labor relations relies on the Information Technology Act of 2000¹² and the Indian Contract Act of 1872.

The regulatory principles applicable to employment contracts are enshrined in Factories Act No. 63 of 1948¹³, Contract Labor (Regulation and Abolition) Act No. 37 of 1970, and Industrial Relations Code of 2020¹⁴.

The Information Technology Act provides for a variety of digital forms of agreement: click-to-sign, e-letter exchange, electronic digital signature. Whatever form is used, an electronic contract is deemed entered pursuant to paragraph 10a of the 2000 Act.

Theoretic research has shown legal regulation of labor is still quite weak in India [Filatkina I.D., Filatkina M.D., Krechetnikov K.G., 2015: 103]. Further introduction of electronic employment contracts will apparently boost employment given that India has the largest population within the BRICS estimated at 1,373.76 million in 2022 and an employment rate of 46.60 percent.¹⁵

¹¹ Employment Contract Form and Labor Management Rules Adjusted since 1 January 2024. Oshmiyany District Executive Committee website. Available at: URL: <https://www.oshmiyany.gov.by/ru/republic-ru/view/s-1-janvarja-2024-goda-korrektirujutsja-forma-trudovogo-dogovora-i-pravila-vnutrennego-trudovogo-24530-2023/> (accessed: 06.09.2024)

¹² Available at: chrome-extension://efaidnbmnnnnibpcajpgclefindmkaj/https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf (accessed: 06.09.2024)

¹³ The Factories Act 1948 (Act No. 63 of 1948), as amended by the Factories (Amendment) Act, 1987 (Act 20 of 1987). Available at: <https://www.ilo.org/dyn/natlex/docs/WBTEXT/32063/64873/E87IND0> (accessed: 06.09.2024)

¹⁴ Industrial Relations Code 2020 as introduced in Lok Sabha on 19 September 2020. Available at: <https://taxguru.in/corporate-law/industrial-relations-code-2020.html> (accessed: 06.09.2024)

¹⁵ Employment rate in India. TRADING ECONOMICS. Available at: URL: <https://ru.tradingeconomics.com/india/employment-rate> (accessed: 06.09.2024)

Employers can themselves introduce HR e-document exchange in entering employment contracts with reliance on labor and information technology laws as long as electronic communication is agreed with workers to be employed.

1.2. Possible use of public systems to electronically enter into employment contracts

In Russia electronic employment contracts can be entered via the portal Work in Russia¹⁶ where contracts for work, job placement and on-the-job practice can also be entered since 1 January 2023.

In Kazakhstan employers are required to observe the form of employment contract since 16 May 2020: One option is to conclude the employment contract electronically at the labor resources portal using the electronic digital signature, or conclude it on paper to be registered with the relevant record-keeping system.¹⁷

The system does not only facilitate statutory reporting for employers but also given the candidate's prior consent endorsed by electronic digital signature, allows to look at his employment record if the portal used for formalization is integrated with the shared record-keeping system. In addition, the electronic system's portal at <https://hr.enbek.kz/> has the information on the worker's side jobs, personal file management, model employment contract and statutory requirements in respect of specific worker categories.

The rules for reporting under employment contracts were introduced by Kazakhstan's Minister of Labor and Social Protection Order No. 353 of 3 September 2020¹⁸. These rules (apart from the procedure for uploading data to the system) define the main concepts for digital record-keeping such as electronic document and e-government along with information system and code integration.

¹⁶ Federal Government Resolution No. 867 On the Shared Digital Platform for Employment and Labor Relations Work in Russia. 13 May 2022 // Collected Laws of Russia. 23 May 2022. No. 21. Article 3446.

¹⁷ Law of Kazakhstan No. 321-VI On Amending Specific Labor Regulations of Kazakhstan. 4 May 2020 // RK Parliamentary Bulletin. 2020. No. 9. Art. 29.

¹⁸ On approval of Rules for submitting and receiving the information on an employment contract in the unified system for recording employment contracts. Registered by the Justice Ministry. 4 September 2020. No. 21173. Available at: <https://adilet.zan.kz/eng/docs/V2000021173/compare> (accessed: 06.09.2024)

The system requires to enter not only the details of employment contract but also the terms of employment such as the type, location and period of work, first day to report for duty, with the said details to be uploaded within 5 days. Entities employing up to 2,000 workers could upload the details of all outstanding contracts within one year, that is, all contracts should have been registered with the system by September 2021.

In addition, more details can be entered such as working hours and rest time, paid leave, maternity leave, child care (adoption) leave.

The details can be entered in various ways: via the public Electronic Labor Exchange portal, or by integrating the corporate HR (employment contract) system with the shared record-keeping system for employment contracts.

Thus, the employer can choose a software shell at his convenience provided that his system complies with the integration rules approved by Acting Minister of Information and Communications Order No. 123 of 29 March 2018¹⁹. For using the Electronic Labor Exchange Portal, the employer should have an account with the website and a valid electronic digital signature to endorse the details and terms uploaded to the employment contract database. The details can be entered either by the employer's CEO or HR department head officially authorized to perform this duty.

The following periods (counted in business days) were provided for specific actions: 5 days for provision of information requested by the employer from a public body, 10 days for job reinstatement and employment contract re-entry into force. In the event of error and reinstatement, the worker should be advised accordingly via his account with the e-government website. The information for the worker is posted to his account the day following the employer's entry of the relevant details while a request can be also served to the shared record-keeping system. This makes up a system where several databases are integrated to enable communication between workers, employers and public authorities.

In Azerbaijan before 1 July 2014, employers were required to upload notices on the employment contract status to the public electronic system, with a liability of maximum 3 years in prison for non-compliance. Howev-

¹⁹ Registered by the Justice Ministry of the Republic of Kazakhstan. April 19, 2018. No. 16777. Available at: URL: <https://adilet.zan.kz/rus/docs/V1800016777> (accessed: 06.09.2024)

er, the reporting terms were extended. Articles 3, 12, 46 of the Labor Code²⁰ establish the rules for notices to be registered via the E-Government portal, with employment contracts taking effect after the notice is registered with the system to prevent the employer's non-compliance and tax evasion. Labor rights of workers will be better protected, once the decision is made in June to enter employment contracts electronically through the public portal²¹ as the relevant information will be available to public authorities in real time.

It is necessary to discuss how and on what basis the form of employment contract will be digitized in some of the BRICS countries.

In China the State Council developed the Guidance on Actively Promoting Internet Plus Action Plan. Further digitization of labor relations is a step towards implementing the Made in China Strategy for 2025²² and the National Strategy of Informatization and Development of China passed in 2016. The said strategies undoubtedly have an impact on the development of electronic record-keeping of personnel and electronic employment contracts.

On 1 July 2021 the Guidance on Electronic Employment Contracts²³ was passed to explain the requirements with regard to the e-platform for conclusion of employment contracts; verification and unambiguous identification of the parties; compliance of electronic signature; and contractual performance by the employer. The regulatory framework includes the Civil Code, Law on Electronic Signature, Law on Cyber-security. In 2022, the State Council has approved 2021-2025 Plan for digital economic development.

Legal regulation of labor relies on the Law on Employment Contracts.

The software for electronic contracts is supposed to ensure the authenticity, fullness, exactness and integrity of the data on contractual terms which is essential for such contract to be strong and binding. The platform should support not only the services to conclude contracts but also the protection, integrity, traceability of data as well as confirm the contract's time and date. Moreover, data requests from unauthorized agencies or persons

²⁰ Approved by Law of Azerbaijan No. 618-IQ of 1 February 1999 (as amended).

²¹ Azerbaijan to Electronically Enter Employment Contracts. 12 June 2024. Available at: URL: <https://ru.apa.az/sotsium/v-azerbaidzane-trudovye-dogovory-budut-zaklyucatsya-v-elektronnom-vide-575705> (accessed: 06.09.2024)

²² Approved in 2015.

²³ Available at: https://www.gov.cn/zhengce/zhengceku/2021-07/12/content_5624319.htm (accessed: 06.09.2024)

should be rejected, with the data available only to the contracting parties (worker and employer) and competent public authorities. In addition, the employer should advise the worker on the methods, process and ways of maintaining the electronic digital signature.

The validity of digital certificates, network data and biometric identification should be ensured, with SMS verification codes sent to the mobile telephone and verification process recorded. Digital keys should be issued only by agencies of the digital certification service.

Apart from signing the contract, the employer is under the duty to advise the worker accordingly through the use of digital technologies, remind on the ways to download, save and review the document, as well as provide assistance, with the underlying application required to run on popular hardware to avoid extra costs. A paper copy of the contract should be made available for free upon demand.

The government recommends to employ platform developed by the public authorities. Where different platform is used by the contracting parties, it should comply with the third level of security and support the function of recording the evidence of electronic employment contract which should be registered with the e-government platform on a mandatory basis.

China's Ministry of Human Resources and Social Security under the State Council is responsible for supervision of national labor market policies and social security. Thus, in introducing the "electronic employment contract" and public platforms, this agency is making the control and supervision of compliance with the labor legislation more transparent, in particular, to prevent abuse with regard to wages and mandatory payments to workers.

Liu Dun and Geng Yuan believe public digital platform is shaping a new model of labor relations based on digital technologies, something that upholds the discipline of employment contract administration [Liu Dun, Geng Yuan, 2022: 24, 28].

In South Africa digitization is underpinned by the 2006 Information Society Development Plan, the 2007 Innovation Towards a Knowledge-Based Economy Program, the 2013 National Broadband Policy, 2015 National Integrated ITC Policy White Paper while the major labor legislation instrument is the 1997 Basic Conditions of Employment Act²⁴. All the electronic

²⁴ Basic Provisions of Employment Act 75 of 1997. Available at: <https://www.gov.za/documents/basic-conditions-employment-act> (accessed: 06.09.2024)

employment contracts are governed by 2002 Electronic Communications and Transactions Act²⁵ containing requirements to electronic communications and electronic signatures. The latter may be of two types: standard and enhanced one, the second being more resistant to forgery and thus believed to be reliable from a legal perspective. The new type of signatures is believed to have environmental effect as well. The concept of e-contract is wider since it may be concluded both via e-mail, special website or otherwise without the use of paper. Except for voice messages, the Act does not regulate electronic communications. Its approval was for the purpose of promoting small and medium businesses and developing human resources, as well as marketing South African electronic products. Meanwhile, the name reproduced in an electronic letter, a photo of handwritten signature and an electronic signature as such are all deemed signature. In fact, electronic documents could be sent via post offices. The receipt of data is also confirmed by electronic signature or letter. Public authorities may confirm legal facts electronically. Good faith is presumed for the use of e-signature, with the signee assuming the burden of proof in the event of dispute. In particular, the Provision on Accreditation²⁶ and the duty of protecting data in the database were introduced.

1.3. Different status of electronic signature for electronic employment contracts

The understanding of digital (electronic) employment contract has evolved with technological progress. While originally it simply meant a contract entered with a remote worker by e-mail and further documented by paper duplicates, it is now a contract to be endorsed by electronic digital signature given the job seeker's consent to electronic communication (e-document exchange), that is, paper-free communication via special software.

In Russia electronic confirmation is governed by Federal Law No. 63-FZ "On Electronic Signature" of 06 April 2011²⁷.

In Kyrgyzstan, e-signature is a feature of electronic employment contract in accordance with Law No. 123 "On Amending the Labor Code of the Kyrgyz Republic" of 23 December 2022.

²⁵ The Electronic Communications and Transactions Act ("ECTA") // Government Gazette. 2 August 2002. No. 23708.

²⁶ Regulation Gazette. 20 June 2007. No. 29995.

²⁷ SPS Consultant Plus.

In India the 2004 Information Technology (Security Procedure) Rules and the 2015 Digital Signature Rules were adopted for the use of electronic records and digital signatures to implement the concept of digitization at work.

The government is authorized to make requirements to the form of electronic signature, method of unambiguous identification of the signee, signature integrity control²⁸. Electronic digital signature is issued by a public authority while the law guarantees the legitimacy of contracts signed with electronic signature, requires to ensure the integrity of e-signatures and establishes the methods to ensure security of e-contracts. A contract is legitimate, once it is entered with a legitimate purpose by the authorized parties on the basis of free consent.

In Kazakhstan concept of electronic digital signature is established by Ministry of Labor and Social Protection Order No. 353 of 3 September 2020 mentioned above. However, this concept has inherent defects since the list of features contains, apart from integrity, ownership and authenticity of electronic document, the term itself, that is, “the means of electronic digital signature”. As “electronic digital signature” is a feature of “electronic document”, it appears that these concepts are defective from the standpoint of formal logic.

In Azerbaijan employers or their authorized representatives are required to use the enhanced electronic signature to endorse amendments to the documentary notice and termination of the employment contract.²⁹

In China practical advice including the concept of electronic signature is provided in the mentioned above Guidance on Electronic Employment Contracts³⁰, with the features (e-message to identify the specific person as a proof of informed performance of actions) differing from those envisaged under Kazakhstan’s law. Importantly, e-signature allows to prove the contract’s existence prior to and its integrity after signing, as well as to establish the time.

With regard to conclusion of electronic employment contracts and creation of the relevant database, regulations will often require to use electron-

²⁸ Indian Information Technology Act. Article 10. Available at: https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf (accessed: 06.09.2024)

²⁹ Available at: <https://www.e-gov.az/az/news/read/47> (accessed: 06.09.2024)

³⁰ Available at: https://www.gov.cn/zhengce/zhengceku/2021-07/12/content_5624319.htm (accessed: 06.09.2024)

ic signature or enhanced electronic signature without specifying whether it is qualified or not.

1.4. Patterns of electronic amendment of the employment contract

Where an employment contract is amended, a distinction is normally made between real amendment of the terms and a need for the employer to make changes due to software errors and not because the terms were incorrectly specified in the contract.

In Kazakhstan, for example, a period of 15 calendar days is provided for amending the terms of an employment contract in the system, with a special period of 30 calendar days envisaged in the event of errors identified in the outstanding employment contract.

In Azerbaijan an amendment to the employment contract will take force, once the employment contract notice formalized by the employer is registered with the electronic system.³¹

A common approach is thus obvious (just like with regard to the conclusion of employment contracts).

1.5. Patterns of electronic termination of the employment contract

Where an employment contract is terminated electronically, the underlying record will normally enable correction of possible errors based on the established procedure and dates.

Thus, a period of three business days is provided for in Kazakhstan to upload the information on the contract's termination. Where corrections need to be made to the system in respect of a contract already officially terminated by the employer, this duty will be assumed by a public agency following the employer's request for correction. The public agency will need to proceed as provided for by the Code of Administrative Procedures mentioned above³².

³¹ Part 1. Article 49. Labor Code of Azerbaijan. Law No. 618-IQ of 1 February 1999 // Collection of Legislative Acts of the Republic of Azerbaijan. 1999. No. 4. Article 213.

³² RK Parliament Bulletin. 2020. No. 13. Article 66.

In Uzbekistan a period of three business days is provided for to upload and confirm the information on contract termination, with the employer allowed to make corrections within 5 days.

The second option appears preferable from the perspective of opportunities for the worker. However, in this case the software should not only trace corrections being made but provide the evidence that termination was incorrectly documented due to a technical error (rather than violation of the labor law by the employer), otherwise this will question the legitimacy of termination entry. It is also necessary to more exactly determine when the period for correction starts off. Apparently, it should be counted from the date when the three days allowed for the termination entry will elapse rather than from the date of wrong entry.

To terminate an employment contract in Azerbaijan, employers are required to enter a documentary notice of employment contract to the electronic information system.³³

Moreover, there are different time marks for electronic contracts to take force.

In Azerbaijan it is thus established that each employment contract will take effect following its registration with a special platform of the e-government portal at <https://www.e-gov.az/>. This system, in operation since 1 July 2014, is designed to ensure public control, increase the collection rate of social contributions and taxes to the budget, and protect labor rights.

In Uzbekistan an employment contract will not take force either unless it is registered by the employer, with the details and terms such as working hours, rest time, probation period (if any), employment type and wage to be formalized within 5 days.³⁴ A contract is deemed registered, once the entries to the system have been confirmed by the employer representative's electronic digital signature. Side letters to the contract and entitlement to social leave are registered in a similar way.

In China an employment contract will take force, once it has been signed by the parties in the system rather than registered or confirmed by a public agency.

³³ Article 3, Labor Code of Azerbaijan // Collection of Legislative Acts of the Republic of Azerbaijan, 1999. No. 4. Article 213.

³⁴ Republic of Uzbekistan. Cabinet of Ministers Resolution No. 971 of 05 December 2019. Available at: URL: <https://lex.uz/ru/docs/4630025#4633148> (accessed: 06.09.2024)

Two different approaches are thus observed. Apparently, the contract's date and time should coincide with the date and time it was registered with the relevant public system, especially since it is technologically feasible to do with the help of modern digital tools.

Conclusion

As follows from the above study of labor legislation across the EEU, BRICS and CIS, legal regulation of electronic employment contracts in these countries has much in common, something that makes a case for an international instrument on digital labor relations to facilitate regional labor mobility.

The proposed international instrument on electronic employment contracts should rely on the positive legal experiences of the EEU, BRICS and CIS states in the field and contain provisions on the concept of electronic employment contract, its contents and the underlying procedure for conclusion, amendment and termination.

Moreover, the international instrument should provide for bilingual contracts to be concluded in the relevant intergovernmental system. It is thus recommended to introduce to the system automatic online translation supported by an application (legal translator) certified by an intergovernmental authority. Focused on a specific worker category — migrant workers from the international organizations' member states — this instrument will contribute to better understanding of contractual terms by these workers and enhance the protection of labor rights.

A special focus in this instrument should be on electronic time stamp of the employment contract to strictly mark the start of labor relationship. The time stamp is important for the emergence of rights and duties (for example, in remote work in the context of time difference). The recording of contractual terms also facilitates control of compliance with labor law. A shared approach to the party identification and recording of contractual terms (not just registration of the contract) can thus improve the protection of labor rights.

Authors of the article believe the proposed international legal instrument will promote the integration of labor practices across international bodies mentioned.



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