

STUDY THE PROHIBITION OF WRONGFUL DENIAL OF EMPLOYMENT

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Annotation: *According to Article 37 of the Constitution of the Republic of Uzbekistan in the previous version, every person has the right to work, freely choose a profession, and work under fair working conditions. In the Republic, a clear and sufficiently flexible procedure for employment established by law is a reliable guarantee of the implementation of this constitutional right.*

Key words: *Labor, person, rights, labor code, laws*

In labor laws, two terms are used: hiring and concluding an employment contract. It is also necessary to note that the second of these terms can be used both in a broad sense and in a narrow sense. In the broadest sense of the word, concluding an employment contract is equal to the concept of hiring. This term is used in the name of the second paragraph of Chapter 6 of the employment contract in this sense.

In the narrow sense of the word, concluding an employment contract means reaching an agreement between the employee and the employer on the terms of the contract and its formalization in the necessary order. This term is used in this sense to mean one of the stages of recruitment. (See Article 82 of the Criminal Code).

The recruitment process can be conditionally divided into three stages:

- introduction ceremony at the start of work;
- conclusion of an employment contract;
- issuing an order on hiring;

On the one hand, the introduction ceremony consists of obtaining information about the nature of the employee's future work and working conditions, and on the other hand, during the interview with the employee entering the job and the presentation of the documents required for entering the job, information about the employee. consists of getting In accordance with Article 178 of the Labor Code, each employee should be familiarized with the scope of work duties assigned to him in advance. Employer recruitment

requires documents provided by law from the employee. It is the familiarization ceremony that gives the employee the opportunity to choose the job that best suits his interests and the employer to choose the employee he needs for the company. However, if this is not enough for the parties to be sure of the correctness of the selection,

according to the agreement between the employee and the employer, in the employment contract and in the hiring order, the parties must decide on the continuation of the employment relationship. the initial test that you receive may be accepted.

Drawing up an employment contract, that is, reaching an agreement between the employee and the employer on all its terms, is the main, primary stage of employment. It can be noted that if the parties do not reach an agreement on the necessary (main) and additional conditions of the employment contract, the employment contract will not be concluded. The labor contract concluded between the employee and the employer must be duly formalized and signed by the parties.

It is the duty of the employer to issue an order to hire an employee who has strictly complied with the employment contract and completes the hiring ceremony.

The strengthening of the norm of not allowing illegal refusal of employment is an important guarantee of the right to work. If the practice of applying the law is applied, then the legality of the refusal of employment is not. Unfortunately, this does not mean that there are no illegal rejections. In practice, they are encountered. The absence of disputes regarding them was due to various reasons, including the fact that the previous MCC did not clearly define the unjustified refusal of employment. It would be very difficult for the employer to determine in which cases the refusal of employment is legal and in which cases it is not. It is for this reason that any refusal to hire an employee was often considered correct.

This serious defect of the previous law was corrected by the new Labor Code. The new Labor Code, without defining the procedure for hiring, also clearly defined what actions of the employer can be considered illegal during the hiring process.

Cases in which refusal to hire is considered illegal are specified in Article 78 of the Labor Code. They can be divided into three groups.

The first group includes cases of discrimination by the employer against the employee in hiring.

Illegal refusal to hire persons in need of enhanced social protection belongs to the second group. The employer is obliged to conclude an employment contract with such persons in accordance with the law.

And finally, the third group covers the illegal refusal of employment in relation to persons to whom the employer has undertaken to employ.

1. Prohibition of discrimination in labor relations is stipulated in Article 6 of the Labor Code. According to the content of the second part of Article 78 of the Civil Code, the requirement of Article 6 of the Civil Code is fully implemented in the recruitment procedure. Direct or indirect advantages in employment based on gender, race, nationality, language, social origin, property status and position, religion, belief, membership of social associations, as well as the employee's work qualities and work results. giving or indirect restrictions are not allowed.

2. Additional guarantees for employment are established for persons in need of enhanced social protection. For example, the law of the Republic of Uzbekistan "On providing employment to the population" stipulates that the employer has no right to refuse employment to persons sent to work at the expense of quotas established by local labor bodies. Jobs are assigned to persons who have special difficulties in finding a job. They are affected by the following people: disabled people, minors and some other employees (single and large parents with children under fourteen and with disabilities; general education schools and other young people who have graduated from military schools; persons released from the ranks of the Armed Forces, MIA troops, National Security Service troops; persons on the verge of retirement; persons released from places of detention or sent to compulsory treatment by a court decision) . According to Article 224 of the Criminal Code, it is specified that women should be refused employment due to pregnancy or having a child.

If an employee who has been conscripted (entered) into military service, after being released from the reserve or resigning, applies to the employer for employment within three months from the date of his release from the ranks of the Armed Forces, the Ministry of Internal Affairs and the National Security Service. , will have the right to be employed at the previous place of work. In this case, the employer will not have the right to refuse employment if there are vacancies in the enterprise. Increased guarantees in the matter of employment are established for employees who have been drafted (entered) into military service and returned to the enterprise in connection with the reserve or resignation within three months from the day of the draft (entry). The employer will not have the right to refuse to accept such an employee for work performed before he was called up (entered) into military service. This guarantee also applies in case another employee is hired instead of the one called to the service.

it is necessary to provide. The employer must offer the hired employee another job in this company or, in case such a job is rejected or if such a job is not available, terminate the employment contract in accordance with the second paragraph of Article 106 of the Labor Code.

If the enterprise is liquidated, the legal successor of the enterprise that has finished providing employment to persons discharged from military service, or if it does not exist, is carried out by the local labor body.

In the first case, the refusal to provide employment to a person discharged from the ranks of the Armed Forces, or in the second case, the previous job (position) may be given, if the employer proves that it is impossible to comply with these guarantees. In such situations, employment of the specified persons is entrusted to the local labor body in accordance with the fifth part of Article 68 of the Labor Code, and if necessary, this body will train them for free.

Guarantees established for the employment of military personnel are applied to employees called to alternative service (part six of Article 69 of the Civil Code).

In accordance with Article 69 of the Civil Code, employees released from work due to being elected to elective positions in state bodies shall be given their previous job after the expiration of their powers in the elective position, if such a job (position) does not exist, they shall be given a job equal to the previous one.

The obligation of previous employment, and in the absence of such a job, the obligation of equal employment is imposed on the employer in relation to the former employee who was dismissed from production as a result of the election to the elected positions of the representative bodies after the completion of the elected powers of the employees. (Article 25 of the Civil Code).

The employer does not have the right to refuse to hire an employee in other cases provided for by the law.

3. Refusal of employment should be considered illegal even if the employer undertakes certain obligations to employ the employee.

For example, an employer does not have the right to refuse to enter into an employment contract with a person who has been invited to work in his company. Such an offer can be made by the head of this enterprise, as well as by other officials on his instructions. The fact of the offer can be confirmed by the appropriate letter of the employer to the offered employee.

A job offer can be expressed in a different form. For example, in the form of preliminary conclusion of an employment contract.

At the same time, it is necessary to specify that the employer's obligation to hire an employee appears only when the employee is personally invited to a particular job. (This does not apply to job offers through advertising).

In accordance with the third part of Article 78 of the Labor Code, regardless of the reason for the refusal of employment, the employer, upon the request of the employee, within three days, the reason for the refusal of employment is based and the employment

is obliged to give the letter signed by the authorized persons. According to Article 224 of the Civil Code, if pregnant women and women with children under three years of age are refused employment, even if they do not apply to him with such a request, the employer is obliged to inform the reason for the refusal in writing.

The employer's refusal with the stated reason cannot be an obstacle to the employee's appeal against the illegal refusal.

Persons who believe that the employment was refused illegally have the right to appeal to the court with an appropriate application. If the court considers the claim to be justified, it will order the employer to conclude an employment contract with this employee from the day of the illegal refusal of employment, to pay him wages 23 for the entire period of forced leave, and to give the employee this position (work) has the right to impose the obligation to collect moral damages in an amount not less than the average salary.

In addition, an employer who illegally refuses to hire may be subject to disciplinary, material, and in some cases, administrative or criminal liability.

Legal refusal of employment.

The employment contract, as mentioned above, provides that illegal refusal of employment will not be allowed. If the employer refuses to conclude an employment contract with employees on legal grounds, his action should be considered reasonable.

Refusal of employment is justified in the following cases:

- if the employer must refuse to hire an employee according to the law;
- when the employer exercises his right to choose the employee with the best, necessary work qualities;
- if there are other circumstances preventing the conclusion of an employment contract.

Current legislation provides for certain restrictions on employment. Both the employer and the employee must follow these restrictions.

The employer must refuse to hire persons who have not reached the minimum age for employment (Article 77 of the Labor Code). It is not allowed to conclude an employment contract with teenagers under the age of 16 without the consent of their father or mother.

In accordance with Article 79 of the Civil Code, persons who are close relatives or godparents (parents, brothers, sisters, brothers and sisters, spouses, as well as brothers and sisters of parents of spouses) and children), provided that one of them directly subordinates to the other or works under his control, it is forbidden to work together in the same state enterprise.

Exceptions to this rule may be established by the government of the Republic of Uzbekistan.

When applying this norm, it is necessary to pay attention to the following important situations:

- firstly, the list of relatives specified in Article 79 is complete and cannot be expanded. Therefore, it is not possible to prevent the employee from entering the job if his/her parent's brother or sister (aunt, aunt) or other persons not mentioned in this list are subordinate to the head of the employee;
 - secondly, the specified clarification applies only to cases where one relative is subordinate to or under the control of another relative. Resolve the issue of existence of direct subordinates or being under control with the help of regulations and job instructions about the staff table of this enterprise, its departments and units;
 - thirdly, the specified prohibitions are applied only to state enterprises.
- other restrictions on employment may be provided by legislation.

In accordance with the legislation, only persons with special education or special training can perform the job, only if the applicant presents a document confirming that

he has the necessary education or training (diploma, certificate giving the right to perform this work, etc.) it should be assumed that it can be done.

For example, in accordance with Article 31 of the Law of the Republic of Uzbekistan "On Education", only persons with high moral qualities, education and professional training are allowed to work as pedagogues and educators in state-owned educational institutions.

Requirements for information to perform this or that job, as well as qualification descriptions of certain categories of employees of students of other qualifications, qualification information not included in the 24 references, and other documents that are confirmed in a centralized manner (legal documents of the state administration bodies of the Republic of Uzbekistan and enterprises the Regulation on the service, the Regulation on accounting and reporting in the Republic of Uzbekistan, the Regulation on the state labor law inspection of the Ministry of Labor of the Republic of Uzbekistan, etc.)

Such requirements necessary to perform this or that work are specified in job descriptions developed directly in enterprises.

Current legal documents allow the hiring of persons who do not have special training or work experience defined by qualification requirements, but who have sufficient practical experience and can perform the tasks assigned to them with quality and full extent. However, according to the law, this provision is not applied to the types of work that persons with special education or training (doctors, pedagogues, drivers and others) can work.

The employer must comply with the above qualification requirements when hiring. Therefore, it can be considered legal to refuse employment if the employee does not have the relevant education, special training or sufficient experience to perform this job.

Requirements for the health status of the employee in the legal documents are also important in hiring. In some cases, an employee's health check is part of the hiring process. That is, when hiring certain types of work or hiring certain categories of employees, the employer must make sure that this job does not harm the health of the employee, in addition to the requirements for education and special training.

For this purpose, in accordance with Article 214 of the Labor Code, the employer must arrange for the following employees to undergo a medical examination when concluding an employment contract:

- those under 18 years of age;
- Men over 60 years old;
- 55-year-old women;
- disabled people;
- those employed in jobs with unfavorable working conditions, night jobs, as well as jobs related to traffic;

- those who are employed in other industries related to trade and direct service to the population in the food industry;

- Pedagogues and other employees of general education schools, pre-school education and other institutions who are directly engaged in education or upbringing of children.

The Ministry of Health of the Republic of Uzbekistan shall determine the list of work with unfavorable working conditions and other work that must undergo medical examination in a preliminary manner and in time.

As a result of the examination, the employer must refuse employment to persons whose health condition does not allow them to perform this work at the required level or is contrary to the health of this work, as well as to persons who refuse to undergo such an examination.

According to Article 45 of the Criminal Code of the Republic of Uzbekistan, deprivation of the right to hold a certain position or to engage in certain activities for a period of one to five years as the main punishment and from one to three years as an additional punishment by a court decision

implies that the punishment can be applied. The employer is prohibited from hiring persons deprived of certain rights for the specified period.

In this case, it should be noted that a person is deprived of the right not to work at any enterprise at all, but of the right to occupy a certain position or perform certain types of work. Consequently, this person will have the right to access other types of cases not specified in the court's judgment on general grounds. All the specified requirements apply equally to the employer and the employee. This sentence means that in the cases mentioned above, the employer does not have the right to accept such an employee, and the employee does not have the right to enter such a job.

If these requirements are not complied with, if the violation of the law committed during recruitment cannot be eliminated and it prevents the continuation of the work, the employment contract should be terminated according to paragraph 4 of Article 106 of the Labor Code.

The employer's obligation to terminate labor relations starts from the moment he notices the violation of the law.

An employer who is aware of such restrictions or does not comply with the request of relevant bodies (prosecutor, legal or technical inspector of labor and others) to terminate employment relations may be held accountable in the manner prescribed by law.

When the employer exercises the right to choose the best employee who has the necessary qualities among the applicants for employment, it is legal to refuse employment. The settlement of market relations in the field of labor implies giving both the employee and the employer the opportunity to choose.

If an employee has the right to choose a job that satisfies him and an enterprise whose payment for labor, work order and other conditions of work meet his needs, the employer also has the right to choose the best employee who is acceptable to perform a certain job. will have

Certain conclusions can be made about the employee in the process of getting acquainted with the documents presented during the recruitment process. When hiring, the employer has the right to give preference to an employee with extensive work experience in the relevant specialty, taking into account qualities such as the ability to work on a computer, work in several specialties, knowledge of foreign languages.

It is also legal to refuse employment in other cases where there are obstacles to concluding an employment contract.

It is necessary to recognize that it is legal to refuse employment if the employee and the employer do not agree on the terms of the employment contract. In several cases, the articles of the MK directly focus on this situation. For example, according to the fourth part of Article 203 of the Labor Code, if the job the employee is applying for requires the conclusion of an agreement on full financial responsibility, and the employee does not agree to conclude such an agreement, the employer has the right to refuse to hire him.

Due to the employer's desire to include in the content of the employment contract conditions that reduce the level of labor rights and guarantees established by laws and other regulatory documents, the refusal of employment cannot be considered legal.

If the job the employee wants to work for is not available in the enterprise or there is no vacancy in the enterprise, the employer has the right to refuse employment.

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