

Case Study: Confidentiality Breach as a cause for Employment Agreement Terminations

In February 2021, Unicase law firm successfully represented a delivery company (*the Client*) in advising on **termination of employment in cases of employee breach of confidentiality under the Kazakh law.**

BACKGROUND

The Client became aware of the fact that one of the employees was leaking internal company data to one of its competitors.

The primary practical issue was whether such breach of confidentiality should lead to the Employee's Employment Agreement termination and whether the Client should proceed to an internal investigation first.

POSSIBLE SOLUTIONS

From a practical point of view, we see Three Options on the termination of an employee:

OPTION 1 - Actions or inaction of an employee for the purposes of monetary self-profit which gives the grounds for the loss of confidence in him by the Employer

Pursuant to Article 52.1.13 of the Labour Code the labour contract may be terminated due to the actions or inaction of an employee for the purposes of monetary self-profit which gives the grounds for the loss of confidence in him by the Employer.

Article 53.7-2 provides that the termination of the employment on the basis of loss of confidence shall be based on the Act of Internal Investigation. It is worth noting that the terms and conditions of the investigation must be specified in the Internal Rules of Investigation which are adopted by the employer.

The Labour Code does not specify for compensation in case of termination of employment based on the aforementioned Article. In turn, the Employer has the right to claim for the damages in the court. At the same time, such claims shall be based on the documentary evidence.

We note that the most important issue is to have evidence of the alleged unlawful actions of the employee.

OPTION 2 - Reduction of the employees number or staff

Prior to reduction of the Employee, the Employer shall issue an order on reduction of Employee on the basis of 52.1.2 of the Labour Code.

Article 28.2.2 of the Law on Employment prescribes that the Employer shall send one-month notice of any reduction to the authorised state agency on labour relations.

Copy of the order on termination must be handed over to the Employee or delivered by the post to the living and registered address of the Employee not later than three calendar days from the date of issuing the order.

According to Article 62 of the Labour Code, on the day of the dismissal, the Employer must give to the Employee labour book or other document confirming the Employee's labour activity.

Moreover, Article 131 of the Labour Code provides that in case of reduction, the Employer shall make compensatory payment to the Employee in the amount of 1 (one) average monthly salary within 3 working days from the date of termination of labour agreement. At the same time, the Employee shall be paid salary for actual period of work and reimbursement for unused leave within the mentioned period.

Therefore, termination of the labour relations with the Employee on annual paid leave or sick-leave, can be executed after such leave.

It worth nothing that in accordance with Article 13 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated 6 October 2017 the Employer should not hire another individual to the same as redundant Employee's position. Failing this, the reduction can be deemed as invalid.

OPTION 3 - On the basis of mutual agreement of the parties

Pursuant to Article 50 of the Labour Code the labour contract may be terminated under mutual agreement of the parties.

In this case, the Employer shall notify employee in writing on termination of the labour contract on the basis of mutual agreement of the parties and Employee shall provide a written response on his decision within three working days.

We also recommend executing an agreement on termination of the labour contract stating mutual agreement of the parties and absence of claims of the parties.

A termination agreement shall be signed by the parties and executed in two copies, one copy for each party.

The date of termination of labour contract under mutual agreement of the parties is determined by agreement of the parties.

In addition, Article 113.4 of the Labour Code provides that the Employee shall be paid salary for actual period of work and reimbursement for unused leave within 3 working days from the date of termination of labour agreement.

CONCLUSION

We find that Option 3 is the most suitable, as under this Option there are no grounds to consider the dismissal as unfair.

Apart from termination, the Employer has the right to submit a claim for reimbursement of the damages due to disclosure of the confidential information. Therefore, prior to proposal of this option to Employee, the Employer should orally notify the Employee that they are fully liable for any damages occurred due to disclosure of any confidential information.

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