

**Program 6D030100 – «Law»  
Recommended for a PhD**

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**Dissertation on «Occupational Health and Safety: Theoretical and Practical  
Issues of Application of Civil and Labor Law»  
ABSTRACT**

The dissertation work was devoted to the study of the practical application of legal approaches aimed at determining the content and ensuring the implementation of civil rights, labor, and personal, to the preservation of health, working capacity of everyone in the production environment in accordance with the Constitution of the Republic of Kazakhstan, the UN Declaration on universal human rights of December 10, 1948, conventions, covenants, ILO Conventions, and recommendations, acts adopted by other world communities, national legislation.

Article 4 of the Labor Code of the Republic of Kazakhstan (hereinafter referred to as the Labor Code of the Republic of Kazakhstan) defines the basic principles of labor legislation, including working conditions that meet the requirements of Occupational Safety and hygiene in accordance with subparagraphs 4) and 5) of this article and the priority of Health and well – being of employees. In this direction, the issues of human capital development in the Republic of Kazakhstan were specially studied, which form the subject of other branches of law, in which everyone should be protected in special ways.

Human capital is the health, knowledge, experience, and opportunities gained by a person through the effective use of an investment fund attracted to the country and economy, which affects the success of a person by increasing the efficiency of production through labor efficiency, the presence of a worthy place in society, in public production. There are three directions in project-strategy for the development of human capital, its formation in society, its implementation in the economy: 1) protecting the health of the population, ensuring life expectancy, developing the Medical System; 2) improving the quality of education and professional level of the population; 3) correct formation of the standard of living of the population, increase of labor productivity, full employment of the population. Accordingly, social legislation should be fully focused on the development of this human capital.

In accordance with the Constitution of the Republic of Kazakhstan, this dissertation work studied in detail mechanisms, and methods of ensuring the rights, freedoms, and well-being of everyone, recognition as a subject of law, freedom of work, free choice of activity and profession, as well as Social Security. The analysis of labor legislation, civil and other industry legal acts on the issue of preserving the life and health of everyone in the production environment was carried out, recommendations and conclusions were given in the corresponding chapters of this dissertation work.

**In the research work**, the interrelationship of intersectoral legal norms in the field of social protection of the population, identification of obligations arising from the occurrence of an offense (omission) related to causing harm to the health of both employees and other individuals in the production environment, bringing the guilty person to justice, ensuring labor safety were studied. The main principle of civil and labor law is to preserve the health, Health and working capacity of each person. This principle, according to the Constitution, applies on equal terms to all employed individuals, regardless of their citizenship. In the dissertation, scientific works related to the research topic, the main international treaties ratified by the Republic of Kazakhstan were thoroughly studied. In the Republic of Kazakhstan, everyone, regardless of the presence or absence of citizenship, is guaranteed the right to protection on an equal basis by law.

**The results achieved in the dissertation work** are based on such significant conditions as ensuring labor safety and, accordingly, determining legal mechanisms and approaches to the implementation of civil, socio-economic rights and freedoms of everyone.

**Validity and nature of the first result.** In the theory of science, it is proposed to ensure the exercise of the rights and freedoms of everyone defined by the Constitution, to assign in this aspect the obligation to accept and consider offenses to managers of all legal entities, regardless of the form of ownership, employers and other officials, respectively, to classify offenses in the theoretical aspect, in accordance with the legislative procedure, into the following three categories:

1) 1) at the first level - it is proposed to introduce rules that include the procedure for generalizing comments in all branches of law;

2) 2) at the second level - within the framework of legal relations on administrative registration, at the level of authorized state bodies, as well as in the civil service system.;

3) 3) at the third level - in the organization of labor in business activities, institutions and other legal entities, in the regulation of Labor Relations, in addition to notifications, it is proposed to introduce procedures for reviewing the comments under consideration.

At the same time, in order to reduce the level of contradictions in law enforcement practice, qualitative regulation of labor relations, it is proposed to revise the provisions of Paragraph 2 of Article 1 of the Labor Code of the Republic of Kazakhstan «used in the meanings defined by the relevant articles of this code» and introduce them in the following wording: «special concepts and terms of labor legislation of the Republic of Kazakhstan are used in the meanings defined by this code, as well as other laws».

**Validity and nature of the second result.** It is proposed to define the provisions of Article 4 (2) of the Labor Code of the Republic of Kazakhstan in the text «freedom of labor» in a new text: «ensuring freedom of labor for everyone-free choice of activity and profession». The presentation of the amendment in this text is based on the following circumstances. If this norm of the Labor Code of the Republic of Kazakhstan is adopted in this edition, the full compliance of this code

with the Constitution of the Republic of Kazakhstan is determined. «The provisions provided for in the current text allow the restriction of the rights and freedoms of everyone in this direction, declared by the Constitution, since the term «freedom of work» can be interpreted in any way, for example, only in the sense of the will of choice of an individual, and the employer does not consider and not satisfy everyone's request for unjustified employment, so the law does not define the conditions for bringing to justice».

The significance and validity of this statement is the development of human capital, the basis for determining in labor legislation legal mechanisms and approaches aimed at ensuring the right of everyone to work in full, to freely choose the type of activity and profession.

According to the Constitution, the task of employment, protection of the population from unemployment, and Social Security is the task not only of the authorities but also of employers. In this regard, the principles of voluntariness, as well as social equality and responsibility should be applied equally in all areas of public life.

**Validity and nature of the third result.** This proposal, that is, the introduction of the concept of an official in labor legislation, application in Labor Relations at the level of the organization, is assigned not only to the first manager but also to the heads of authorized structures, leading specialists, whose responsibility is not defined by law. In defining the concept of an official, there are grounds to conclude the following: an official – an employee who performs administrative, industrial and economic activities, management of the labor collective and, accordingly, has the right to instruct employees in the performance of official duties on the basis of normative legal acts, the Charter of the organization, acts of employers adopted on the basis of the charter, an employment contract, a collective agreement, an official instruction and other acts.

**Validity and nature of the fourth result.** An individual performing a certain work on the basis of a civil contract forms a number of employed persons. This category of persons should be subject to the rules of Occupational Safety, Investigation of cases of Occupational Injuries, occupational diseases. The justification is based on Paragraph 2 of Article 24 of the Constitution of the Republic of Kazakhstan, so it is proposed to make an amendment in accordance with Article 186 of the Labor Code of the Republic of Kazakhstan. In modern conditions, there is a latent, non-transparent situation in which persons who come into contact with the production environment in various forms are exposed to accidents and labor injuries. The reason for this is the lack of a clear definition of legal mechanisms and approaches that determine the security of everyone's rights in this direction.

In this direction, it is necessary to take into account the fact that the right of everyone to work in accordance with the requirements of safety and cleanliness is based on the Constitution. Accordingly, it is necessary to determine the equal application of the regulations on Occupational Safety to all persons employed in the form of employment of the population, regardless of the specifics of the type of activity (work). The rights and freedoms defined by Article 24 of the Constitution

are the rights and freedoms of everyone, that is, all persons employed with working conditions in accordance with safety requirements, regardless of the specifics of their activities, types of work and forms of employment, must be provided on an equal footing.

In the order of making the appropriate supplement, it is necessary to add subparagraph 5) of Paragraph 1 of Article 186 of the Labor Code of the Republic of Kazakhstan in the following text: «individuals who are in contact with the production environment in the order of concluding civil law contracts, transactions at the level of the organization». The right of everyone to ensure working conditions in accordance with safety requirements is recognized in the legal system as an object of Legal Regulation and legal category, as well as in the civil legal aspect as an inalienable personal non-property right, benefit of the individual. The Constitution is a formal source of fundamental sectoral legislation, affecting all branches of law. Therefore, taking into account the fact that persons involved in the work on the basis of civil law contracts have direct contact with the head of the organization, the issue of causing damage should be defined in the labor legislation along with civil law. In this aspect, it is necessary to regulate the labor legislation provided for in human capital development programs. The lack of legislative regulation of this issue is the basis for the emergence of contradictions, disagreements, and conflict situations.

**Validity and character of the fifth result.** Taking into account the need for a timely solution in labor relations of a number of industrial, organizational, socio-economic, procedural measures, the new text proposes to define the following complex concept concerning the inclinations of employees: «unscrupulous-individuals and (or) legal entities that have received unlawful consent from the bodies of trade unions, their associations and employees, who have the right to carry out illegal activities in accordance with the legislation of the Republic of Kazakhstan, the charter of the organization, collective, or employment contract and other acts». Special attention should be paid to the issue of determining the status of an employee in the Labor Code of the Republic of Kazakhstan, taking into account the application of the provisions of this code in accordance with paragraph 3 of Article 1 of the Civil Code of the Republic of Kazakhstan, as well as the form and procedure for registration of a representative office. It is possible to create several language bodies at the collective level as employees, and in this aspect, relations arising on the basis of social partnership are taken into account.

At the same time, it is proposed to introduce the concept of «procedural measures» in the LC of the Republic of Kazakhstan, because in practice there is often a need to determine the competence of an employee who performs the organization of daily production, planning, registration of documents and registration of legal acts in the authorized state bodies in accordance with the procedure established by law. In labor relations, the need for immediate timely resolution of industrial, organizational, socio-economic, procedural (procedural) measures of legal significance should always be taken into account.

**Validity and character of the sixth result.** Based on the fact that the right of everyone to employment from the age of 14 is established by subparagraph 2) of

Paragraph 2 of Article 31 of the Labor Code of the Republic of Kazakhstan, the law of the Republic of Kazakhstan «on trade unions» should determine the possibility of membership in a trade union, admission of employees who have entered into labor relations from the age of 14. The reason for this is that in practice, the issues of protecting the rights and interests of persons included in this category remain insufficiently regulated.

**Validity and character of the seventh result.** One of the most difficult issues is determining the nature of all internal acts aimed at regulating Labor Relations at the organization level. In this regard, in accordance with the Constitution, laws and bylaws, in order to implement the rule of law, the scope of all acts adopted at the organization level, the procedure for their application, will be clearly regulated. It is known that ensuring labor safety depends on the acts adopted at the level of the organization, in the case of the Labor Code, the goal is to clearly establish the working conditions of the employed person at the level of the organization, the norm and time of work, rest time, safety standards, requirements for compliance with Labor hygiene, the order of remuneration and other working conditions with the direct participation of employees.

In conclusion, it is necessary to define the following types of acts adopted by the legislation, at the level of the organization: acts of employers; acts adopted by the authorized body of employees; acts adopted jointly with the employer and employees.

The proposals and conclusions presented in the dissertation are aimed at improving the quality of human and citizen's ability to live, qualitative regulation of relations arising in connection with ensuring the safety of objects of various forms of ownership, property, industrial development, competitiveness of our economy, taking into account the risks that may arise, determining the rights and obligations of interested parties.

The peculiarity of this scientific research work is that it provides for the task of defining and applying standards on Occupational Safety at the organizational level, preserving the health, health of the employee in the context of the formation of a new doctrine of labor law; improving labor legislation on the basis of achieving demographic indicators of the population, defining a new system of Occupational Safety, defining concepts and rules of a new direction of Labor, industrial processes.

The introduction of a scientifically based system for assessing occupational risks in the Republic of Kazakhstan is the main methodological tool for the high-quality, full-fledged formation of a system of Occupational Safety and health. Based on the application of approaches to the study of occupational risks, it was taken into account the need not only to get an idea of the causes of disability, damage to health but also to bring the composition of subjects of the Institute of labor protection into line with the Constitution of the Republic of Kazakhstan. The results of the research work will allow us to form a modern model of ensuring labor safety, managing this system at the organizational level, the use of legal mechanisms, approaches appropriate to market relations, in the organization of

activities aimed at determining the priorities of state policy in the field of Occupational Safety, Health Protection, reducing financial burdens.

The dissertation examines the stages of formation of various forms and mechanisms of social protection of employees from occupational risks, insurance. The theory and practice of the formation of the system of social insurance of employees against accidents at enterprises, relatively, ideas, legal mechanisms applied in European countries, in particular, primarily in Germany, Estonia, conceptual positions, experience in relation to the ILO standards for Occupational Safety and health were taken into account.