

ORGANIZATIONAL AND LEGAL SUPPORT OF REMOTE WORKING OF GOVERNMENTAL AUTHORITIES OF THE REPUBLIC OF KAZAKHSTAN

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Abstract. This paper examines the issues related to the organization of remote working in the civil service system of the Kazakhstan during the Covid-19 Outbreak. The author analyzed the organizational and legal problems related to remote working policy in the Republic of Kazakhstan in 2020-2021.

The analysis concerned the study of international experience, Kazakhstan's labour legislation that regulates issues in the area of remote working policy. The study revealed that the implementation of remote working could lead to long-term benefits for the Civil Service in the form of the quality of service and cost-effectiveness. The author proposes a number of recommendations related to the remote working policy in the domestic regulatory legal acts.

Keywords: civil service, pandemic, remote working policy, self-isolation, regulatory framework, digitization, logistics.

JEL code: K31

Аңдатпа. Бұл мақалада COVID 19 пандемиясы жағдайында ҚР Мемлекеттік басқару жүйесінде қашықтықтан жұмыс режимін ұйымдастыруға байланысты мәселелер қарастырылады. Автор 2020-2021 жылдарға арналған Қазақстан Республикасындағы қашықтықтан жұмыс істеуге байланысты ұйымдастырушылық-құқықтық мәселелерді талдауға әрекет жасады. Талдау осы саладағы мәселелерді реттейтін отандық еңбек заңнамасын зерделеуге қатысты болды. Нормативтік құқықтық актілерді талдауды ескере отырып, автор мемлекеттік басқару жүйесіне қатысты нормативтік құқықтық актілерде қашықтан жұмыс форматына байланысты бірқатар ұсыныстар жасады.

Түйін сөздер: мемлекеттік қызмет, пандемия, қашықтықтан жұмыс істеу тәртібі, өзін-өзі оқшаулау, нормативтік құқықтық база, цифрландыру, материалдық-техникалық қамтамасыз ету.

JEL коды: K31

Аннотация. В данной статье рассматриваются вопросы, связанные с организацией дистанционного режима работы в системе государственного управления РК, в условиях пандемии COVID 19. Автором сделан анализа организационно-правовых проблем, связанных с дистанционной работой в Республике Казахстан, по состоянию на 2020 – 2021 годы. Анализ коснулся изучения международного опыта, отечественного трудового законодательства, регулирующего вопросы в данной сфере. С учетом анализа нормативно-правовых актов автор предлагает ряд рекомендации, связанных с дистанционным форматом работы, в нормативно-правовых актах относительно системы государственного управления.

Ключевые слова: государственная служба, пандемия, формат дистанционного/удаленного режима работы; самоизоляция; нормативно-правовая база, цифровизация, материально-техническое обеспечение.

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Introduction

The COVID-19 pandemic has become a certain catalyst for the active introduction of remote working in the public administration system and in all spheres of society in general.

Yet, remote working is not possible in all activities of our society.

First of all, its expediency is considered for industries and specialties that are associated with the exchange of information, the implementation of various kinds of

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communications, the provision of certain types of professional services - for example, for IT areas, HR personnel services, finance (accounting and auditing), consulting, translation services, procurement, etc.

The author analyzes the organizational and legal aspects of the remote mode of work in the public administration system of the Republic of Kazakhstan, taking into consideration the current labor legislation.

Urgency of the research comes from the fact that the current pandemic and the state of emergency introduced in that regard in March 2020 had a significant impact on the activities of public administration. Many state bodies of the Republic of Kazakhstan transferred their employees to a remote mode of work under the Decree of the Chief Sanitary Officer of the Republic of Kazakhstan using to the full the available online technologies allowing a remote or partially remote work format. That was the only right decision in the context of the spread of a viral infection on the recommendations of the sanitary authorities (*Chief Sanitary Officer, 2020*).

At the same time, despite the relevance of the new format of work the use of it entailed numerous issues, primarily related to its legal and organizational support, proper formalization, technical support for employees, the introduction of effective digital platforms and other socially significant ones related to delivery of public services online taking into account possible risks and problems.

Research approach — to solve research problems the following universal general scientific methods are used: analysis, synthesis, content analysis, comparison, forecasting, statistical analysis, secondary analysis, interpretation of applied research data related to remote work issues.

Initial Review

Remote working, as experience has shown, has a number of advantages and disadvantages. Among the advantages are the following:

- Economic - employees (and employers) save time and costs on commuting to and from work, decrease of costs for parking spaces, office space rent, etc.
- Ecological - the use of transport by

employees decreases, which gives a lower level of environmental pollution and a certain effect for preserving the environment, especially in large cities of Kazakhstan.

- Digitalization - development of IT when working remotely and, as a result, the development of the digital economy through advent of new digital platforms, communication and analysis of big data (Big Data).

- Competition in the labor market - the remote work format is deep bench of potential talents (almost without geographical restrictions) for employers, and the opportunity to work in other places without leaving their main place of residence for potential employees who live in other regions.

In addition, remote working is an opportunity to work for people with disabilities, for example, wheelchair users, who can get the job they want remotely without unnecessary efforts.

Counter-arguments include the following factors:

- Political, imperfection of labor legislation related to transition to remote working of certain part of the population.

- Economic, insufficient material and technical support.

- Social and cultural risks associated with the mental and physical health of workers. This also includes decrease of work efficiency due to the lack of control, technical failures, and presence of distracting "household" and other factors.

- Technological, information security issues and digital illiteracy of the population.

The American scientists Nilles Jack M., Kinsman Francis, and Gordon Gil initiated formation of the scientific concept of distance employment and the practice of its use.

Jack Nilles is known as the founder of telecommuting and telework. It was he who first introduced these terms into scientific circulation in 1973. He is a recognized expert on teleworking in Europe and America and the author of several books on the basics of telecommuting, including "Making Telecommuting Happen" and "Managing Telework" (*Nilles, 1994*).

Gil Gordon is one of the world's first "telework" experts who began consulting in 1982, helping to develop television programs for private and public organizations. He is

one of the world's recognized specialists in organizing telework and virtual offices. He is also the editor of the first and still one of the best magazines on "telework" "Telecommuting Review", been published since 1984, and in electronic format since 1999. He is also co-author of "Telecommuting: How to Make It Working for You and Your Company" (Siha, 2006).

Such scientists as: Huws Ursula; Pratt Joanne H.; Nie Norman N.; Schiff Frank; Wellins Alan; Reese Shelly; Roche Eileen; Hill E. Jeffrey; Brent C. Miller; Weiner Sara P.; Colihan Joe; Igbaria Magid; Kurland Nancy V.; Bailey Diane E. and others studied in their works issues of remote employment, as one of the promising forms of labor organization, in the period 1990-2010.

Among Russian scientists dealing with the problems of new forms of employment, one can note: Gimpelson V., Kapelyushnikov R., Kostakova V., Chizhova L., Sindyashkina E., Parinova S., Chernukhina V., Shmelkova E., Goryannikova V., Golovkina A., Promtova O and others.

Unlike foreign colleagues Kazakh scientists who considered the issues of remote work in the public administration system are not so widely represented today. Among Kazakh scientists, experts, etc. who conducted the analysis can be noted: Dzhumabaev S.A., Abil E. K., Apergenova R.S., "On the experience of developing information and analytical competencies of civil servants" Kazbek B.E., Comparative

review of international experience in digitalization of public services., Almash A.Zh., The role of digital communication in diplomacy and digital diplomacy of Kazakhstan. Shapkenov S.Zh., Zhazykbaev D.M., Khudaibergenov O.A., Khamidullina E., Aslyaliev T.Zh., Shumekov D.N., Shevchenko A., Omarbekova Zh.A. They demonstrate feasibility of remote work regulation, while the fundamental participation belongs to the government.

In addition, the international conference on "Remote work of civil servants" held on May 6, 2020 for the first time should be noted. This event was organized by the Agency of the Republic of Kazakhstan for Civil Service Affairs together with the Astana Civil Service Hub, the Academy of Public Administration under the President of the Republic of Kazakhstan and Atyrau State University named after Kh. Dosmukhamedov (Astana Civil Service Hub, 2020).

The results of a survey among civil servants of Kazakhstan on the experience of remote work during the quarantine period were presented at the conference. The survey showed that more than half of the respondents positively assess the transfer to remote work admitting some organizational and technical problems. At the same time, 31% noted common technical problems, 19% reported extremely low quality of the Internet (Celano, 2019).

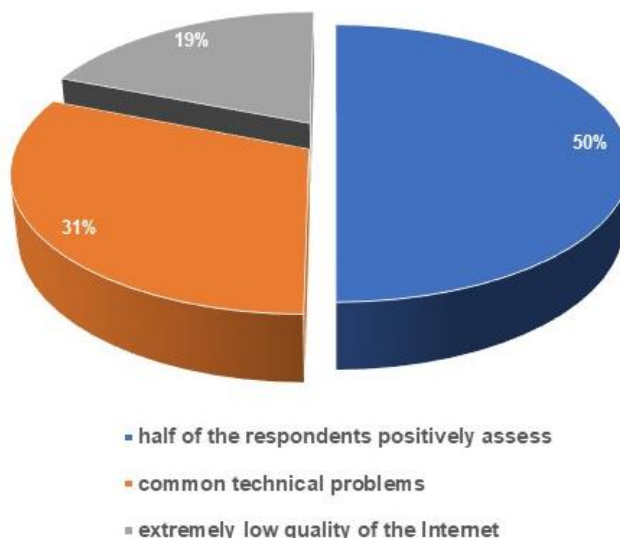


Figure 1 - The survey among civil servants of Kazakhstan on the experience of remote work during the quarantine period

However, today some provisions of the labor legislation of the Republic of Kazakhstan still have certain problems in the implementation of remote work. As such, we can note the presence of shortcomings in the form of legal gaps in the public service system.

International experience

During the COVID 19 pandemic, globalization, and the development of information and communication systems, new non-standard forms of employment are emerging, designed to satisfy the needs of modern society. One of these new flexible forms of employment is "remote work", which has already found legislative consolidation in most countries of the globe.

USA

The United States of America can rightfully be called one of the most advanced nations globally in terms of the development of legislation and the practice of teleworking. At the same time, it is worth noting a significant feature of US labor law at once. The labor law is considered a combination of two sub-sectors: labor law for employees of the non-state sector of the economy and labor law for government employees, which regulates telework issues in detail.

The Law "On the Improvement of Teleworking" adopted in 2010 (*Senate and House of Representatives of the US, 2010*), which applies to all employees of federal executive departments, obliges each executive body to establish a teleworking policy according to which employees who meet the relevant types and do not have disciplinary offenses have the opportunity to work remotely. According to this law in the USA, "telework" refers to the organization of a flexible work schedule in which an employee performs duties and fulfills obligations for such an employee position, as well as other permitted activities, from an approved workplace, as opposed to the place where the employee would otherwise work. The teleworking policy established by government agencies must necessarily reflect the following conditions:

- the voluntary nature of telework (while telework is not an employee's right. The possibility of telework is considered individually depending on the personal (family) responsibilities of the employee, the

state of health, the specifics of the work performed, and other objective criteria that allow us to conclude that telework will not negatively affect the effectiveness and quality of the work performed);

- guarantees that teleworking will not reduce the effectiveness of the activities of the state body in general and the effectiveness of the work performed by the teleworker, in particular;

- the obligation to conclude a written teleworking agreement between a government agency (employer) and an employee who has expressed a desire to work remotely;

- the absence of objective barriers preventing the implementation of telework, including the need to carry out work at the employer's location due to the specifics of the work performed or job responsibilities (for example, work with classified materials or work carried out by a security guard or a receptionist, etc.);

- the employee's obligation to undergo special interactive training on telework.

Russian Federation

The concept of remote work in the Russian labor legislation appeared in 2013. By "remote work", the Labor Code of the Russian Federation (*The State Duma, 2013*) means "the performance of a labor function defined by an employment contract outside the location of the employer, its branch, representative office, or other separate structural subdivision (including those located in another locality), outside a stationary workplace, territory or object directly or indirectly under the control of the employer, provided use for the performance of this labor function and the implementation of the interaction between the employer and the employee on issues related to its performance, information and telecommunication networks of general use, including the Internet". Russian legislation's general provisions on "remote work" indicate a specific way of interaction between the parties to an employment contract — the exchange of electronic documents carried out using enhanced qualified electronic signatures by a remote worker (a person applying for remote work) an employer. In the form of an exchange of electronic documents, the following actions can be carried out:

- familiarization of the employee with the rules of internal labor regulations, other local regulations, acts of the employer, collective agreement;
- presentation of documents required for the conclusion of an employment contract by an employee entering into a job, while at the request of the employer, the employee is obliged to provide notarized copies of these documents on paper;
- providing explanations or other information by the employee.

Since personnel document management in Russia is carried out in paper form, the federal law provides the obligation to issue an employment contract on paper within 3 (three) calendar days from the date of conclusion of the employment contract by exchanging electronic documents.

Familiarization of the remote employee with the employer's order (order) on termination of the employment contract can also be carried out in the form of an electronic document. However, on the day of termination of this employment contract, the employer is obliged to send the remote employee by registered mail with a notification a duly executed copy of the specified order (order) on paper.

It is worth noting that 30 years ago a number of Western European governments predicted that modern socio-economic changes associated with the globalization of the economy, the development of information technology and other factors would generally affect the nature of social and labor relations around the world.

Many international companies currently use remote work formats as way to efficiency and sustainable business instead of epidemiological necessity step.

Among these companies are IT companies - for example, GOOGLE, Facebook, Microsoft, etc. According to the analytical center, "International Workplace Group», remote employment in one form or another will cover about 2 billion people around the world by 2022, which is 42.5% of all the labor resources of the planet (Siha, 2006).

For example, in the 80-90s of the XX century the UK government developed the information and communication component of public services and all public administration technologies. Furthermore, the concept of e-government began to

develop due to transition of a certain part of civil servants to a remote mode of work in the context of these ideas and tasks.

The Employment Act 2002 is a striking example of that policy under which since April 2003 the workers with disabled children or children under the age of 6 have been given the right to demand flexible working hours from their employers or work remotely (*The Parliament of the Republic of Kazakhstan, 2021a*)

However, in the UK, social isolation is often spoken of as a disadvantage of telecommuting, as the workplace, the office and the organization as a whole are a socially active environment.

Analysis of remote work in public administration of the Republic of Kazakhstan

From March 2020 to July 2021, the state bodies of the Republic of Kazakhstan carried out certain work to improve the system of remote work, in a pandemic. As a result, an important document, i.e. the Law of the Republic of Kazakhstan "On amendments and additions to the Labor Code of the Republic of Kazakhstan on the improvements of remote work legal regulation" dated July 1, 2021 No. 61-VII was adopted (*The Parliament of the Republic of Kazakhstan, 2021c*).

It should be noted that earlier the Senate of the Parliament of the Republic of Kazakhstan adopted amendments to the Labor Code of the Republic of Kazakhstan on improving the legal regulation of remote work (2021a). The amendments are aimed to improve labor legislation in terms of regulating the procedures of remote work. Thus, the Code is supplemented by new definitions: combined remote work and remote work.

Combined remote work - the labor process when labor duties are performed at the premises of an employer and remotely by alternations. Thus, depending on the nature of the work and the employee's location "in the office", he can be set to fully remote work mode (always works "remotely"), or combined remote work mode (work is performed both "remotely" and at the location of the employer).

Moreover, the Labor Code of the Republic of Kazakhstan does not contain restrictions on the execution of labor

agreements on the use of remote work in various areas of life (medicine, tourism, public service, etc.). The organizational form of company or management is also not an obstacle in the application of remote forms of implementation of their labor duties. If we analyze domestic regulatory legal acts in the field of labor relations, it can be noted that labor legislation contains only special aspects of the implementation of remote work.

In accordance with Article 138 part 1 of the Labor Code of the Republic of Kazakhstan, remote work is considered as one of the forms of the labor process, which differs in its special aspects and is implemented outside the employer's premises using information and communication technologies in the process of work (*The Parliament of the Republic of Kazakhstan, 2021b*).

In Article 138 part 2 of the Labor Code, the legislator also regulates the obligation of the employer to provide employees with means of communication, and incur the corresponding costs for their installation and maintenance. Alternatively, if the employees use their own means of communication, employer pays them appropriate compensation. The rest of the costs associated with the cost of electricity and water can also be reimbursed by agreement of the parties.

Thus, the disposition of Article 138 of the Labor Code of the Republic is deemed as progressive in the labor policy of the country as it provides a number of guarantees to an employee working remotely. At the same time, the requirements of Article 138 part 3 of the Labor Code do not correspond with the requirements of public service because of direct record of hours worked.

In addition, the legislation governing Public Service does not contain ban provisions on remote work. The legislation also lacks stimulation of remote work. However, unlike labor legislation, by-laws in the public service regulate the public service labor procedures procedure more carefully.

In view of the abovementioned, the legislators carefully approach the issues of remote work in the public service system. Taking into account the peculiarities of the public service, it should be noted that the remote form of work is not suitable for all categories of incumbents. At the same time,

we do not see a direct ban on the use of remote work in the public service system. In this regard, it is recommended to create a job classifier by the HR services of state bodies and specify those that fall under the remote work format.

In addition to the above, in the context of the coronavirus pandemic, it is possible to attract relevant specialists from the civil sector for remote work in government bodies who have the appropriate skills to implement support functions. The foregoing is due to the fact that the involved specialists do not directly participate in the implementation of state functions but perform auxiliary functions of supporting nature.

In accordance with Art.1 para.6 part 1 of the Law of the Republic of Kazakhstan "On public service", the public service is understood as the activity of civil servants in state bodies for the execution of official powers, aimed at implementing the tasks and functions of state power (*Frolov, 2020*).

Thus, this definition of the Law of the Republic of Kazakhstan "On Public Service" needs to be improved. The author initiates the need to change the definition "public service". So, it is advisable to imply under that definition not only the official power competence of civil servants, but also employees hired under a civil contract.

In order to understand the essence of remote form of work, it is necessary to consider its special aspects. The main aspect of the remote form of work is that is performed outside the workplace of a civil servant. Definitely, this creates certain organizational and managerial difficulties. In order to exercise authorities of a civil servant, the employee must actively use information and communication devices.

At the same time, other specific features of the remote form of work can be established. For example, the option of the employer to terminate the labor agreement, as well as such additional guarantees for service, such as independent determination of the labor schedule. However, such signs are not applicable to some law enforcement agencies of the Republic of Kazakhstan, where constant monitoring of the activities of civil servants is necessary. In addition, it is recommended to set out at the legislative level the rules for the exchange of electronic documentation.

The need to equip employees of state

bodies with information and communication devices can be noted as organizational measure for ensuring a remote form of work. In this regard, the informatization of law enforcement agencies today is a timely step towards the modernization of the law enforcement system. A complete transition to duplication of the main documentation with electronic data will make it possible to take a big step in the improvement and technical support of the remote form of work.

In addition to the above, it should be noted that when concluding an employment agreement with an employee, the place of work is not specified. This is due to the fact that labor functions are performed outside the location of the employer.

At the same time, there are job positions in the public service system for which the remote work format is unacceptable. This category of civil servants should include employees who are directly related to the implementation of organizational and administrative functions, that is, direct contacts with top managers, as well as control over the implementation of state functions. It is not possible to exclude them from the current control over the activities of the state body. This category of civil servants includes employees of headquarters and personnel departments, office workers and persons who receive citizens.

Remote mode of operation is not acceptable for persons whose place and mode of work are determined by regulatory legal acts. For example, the deputy akims of the city, or the akims of the district in the capital, are obliged to constantly be at the workplace considering demand for their continuous interaction with the city akims, heads of city administrations, heads of departments, and population. The main goal for the administration of the city is the sustainment functions, that include uninterrupted supply of electricity, water supply, heat, public transport, sanitary cleaning, garbage disposal, the activities of social facilities (kindergartens, schools, hospitals, etc.). In addition to the above, in accordance with the regulatory legal acts, all deputies of the city akims and akims of the district are guaranteed a workplace equipped with equipment and relevant appurtenances.

The civil servants under consideration perform their functional duties in accordance

with the regulatory legal acts of the Republic of Kazakhstan. Due to the specifics of state functions, the remote format of work does not apply to them. At the same time, if such persons work in an emergency mode, the use of a remote work format is acceptable and justified.

The employer is recommended to clearly specify the "place of work" if working remotely. It is recommended to specify the place of work of the employee where the most work is performed as a permanent place of work. It is recommended to specify the public reception offices as a permanent place of work if talking about parliamentarians of the Republic of Kazakhstan.

Recommendations

Thus, it is necessary to indicate the legal status of a civil servant at remote work in order to determine legislatively the conditions for the implementation of the remote format of work, in the relevant legislation regulating public service. In addition to the above, similarly, it is necessary to resolve the issue of differentiation of civil service between civil servants working remotely and non-remotely.

In order to implement the abovementioned, it is meant to elaborate the classification of civil servants as follows: employees not allowed to work remotely; employees allowed to work remotely; employees for whom remote work is considered as a promising direction for improving the public service system. It is promising to increase the efficiency of the civil service by improving the legal framework for working remotely.

In addition to organizational and legal support, the introduction of a full or partial remote mode of operation in the public administration system in the Republic of Kazakhstan also affects digital transformation issues to optimize business processes in terms of releasing employees to strengthen analytical and predictive functions. As a result, it will improve the quality of decisions, minimize, and in some cases, completely exclude corruption risks. However, digitization of the existing cumbersome bureaucratic procedures will have a limited effect that is not commensurate with the resources spent.

Therefore, there is a need for qualitative new approaches based on the restructuring of state management activities in line with three main trends: political - to focus on the rights and needs of the citizen, economic — to transfer part of the functions of the state to business and managerial — to de-bureaucratization, through the introduction of the principles of project management as an effective method of public administration.

For example,

- Introduction of KPIs for digital vice-

ministers, deputy "akims" of regions criteria for evaluating their work.

- Checks of telecom operators for compliance with communication quality parameters. (especially in rural areas)

- Digital sovereignty. Availability of source codes for a particular state digital platform to guarantee information security.

- Human-centricity is transforming all digital services so that citizens and businessmen do not feel like the "bureaucratic machine".

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ МЕМЛЕКЕТТІК ҰЙЫМДАРЫНДА ҚАШЫҚТЫҚТАН ЖҰМЫС ІСТЕУДІ ҰЙЫМДАСТЫРУ-ҚҰҚЫҚТЫҚ ҚАМТАМАСЫЗ ЕТУ

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ОРГАНИЗАЦИОННО-ПРАВОВОЕ ОБЕСПЕЧЕНИЕ ДИСТАНЦИОННОЙ РАБОТЫ В ГОСУДАРСТВЕННЫХ ОРГАНАХ РК

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