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Cover Page Footnote

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THE EFFECT OF A NEW EDITED LABOR CODE OF THE REPUBLIC OF UZBEKISTAN ON THE DEVELOPMENT OF ENTREPRENEURSHIP AND INVESTMENT ACTIVITY

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Annotation: the article discusses the need for a new edition of the Labor Code of the Republic of Uzbekistan and its impact on the development of business and investment activities in the country. Debating questions which the new edition of the Labor Code will change the current edition are analyzed. In particular, various solutions are proposed in relation to various kinds of disputable situations within employees, business representatives and the state, arising in the sphere of social and labor relations. The fact that there is no unified approach to adoption of the Labor Code in a new edition, first, it justifies the need for drafting of concept. The most important ideas that can form the basis of the Concept of the Code are analyzed. Scientists' opinions are being studied on improving the code. In addition, the impact of the adoption of the new Labor Code on the economy, based on the analysis of the role of the importance of the new Labor Code adopted in some foreign countries (Georgia, Kazakhstan, Tajikistan) in the development of entrepreneurship, is predicted.

Keywords: labor relations, code, labor code, new edition, conception, business, entrepreneurship, investment, state program, improvement.

Аннотация: мақолада Ўзбекистон Республикасининг янги тахрирдаги Меҳнат кодексини қабул қилиш зарурати ҳамда унинг мамлакатимизда тадбиркорлик ва инвестиция фаолиятини ривожлантиришига таъсири кўриб чиқилади. Меҳнат кодексининг янги тахрири амалдаги тахририни қанчалик ўзгартириши юзасидан мунозарали саволлар таҳлил қилинади. Хусусан, ижтимоий-меҳнат соҳасида ходимлар, бизнес вакиллари ва давлат ўртасидаги ўзаро зиддиятли муносабатларга нисбатан турли хил ечимлар таклиф этилади. Янги тахрирдаги Меҳнат кодексини қабул қилиш юзасидан ягона ёндашув йўқлиги сабабли, аввало, унинг концепциясини ишлаб чиқиш лозимлиги асослантирилади. Мазкур кодекс концепциясининг асосини ташиқил қилиши мумкин бўлган энг муҳим гоялар таҳлил этилади. Кодексни такомиллаштиришига доир олимларнинг қарашлари ўрганилади. Шунингдек, айрим хорижий давлатлар (Грузия, Қозоғистон, Тожикистон)да қабул қилинган янги тахрирдаги меҳнат кодексларининг иқтисодий таъсири ўрганилиб, янги тахрирдаги Меҳнат кодексининг тадбиркорликнинг ривожлантиришидаги ўрни илмий башиорат қилинади.

Калит сўзлар: меҳнат муносабатлари, Меҳнат кодекси, концепция, бизнес, тадбиркорлик, инвестиция, давлат дастури, такомиллаштириш.

Аннотация: в статье рассматривается необходимость принятия Трудового кодекса Республики Узбекистан в новой редакции и его влияние на развитие предпринимательской и инвестиционной деятельности в стране. Анализируются дискуссионные вопросы о том, в какой степени новая редакция Трудового кодекса изменит текущую редакцию. В частности, предлагаются различные решения в отношении разного рода спорных ситуаций между работниками, представителями бизнеса и государством, возникающими в сфере социально-трудовых отношений. Обосновывается необходимость, прежде всего, разработки концепции Трудового кодекса в новой редакции, поскольку отсутствует единый подход к его пониманию и принятию. Анализируются наиболее важные идеи, которые могут составить основу Концепции данного Кодекса. Изучаются мнения ученых об улучшении кодекса. Кроме того, прогнозируется влияние принятия нового Трудового кодекса на экономику, на базе анализа роли из значения нового Трудового кодекса, принятого в некоторых зарубежных странах (Грузия, Казахстан, Таджикистан), в развитии предпринимательства.

Ключевые слова: трудовые отношения, кодекс, Трудовой кодекс, новая редакция, концепция, бизнес, предпринимательство, инвестиции, государственная программа, совершенствование.

Ensuring economic development and welfare of the population is the main goal of modern Uzbekistan. More specifically, our goal is to see that our country by 2030 in the list of the top fifty states with developed economy. With changes in the political leadership of the country, a new wave of reforms in all sectors began in 2017. Liberalization of currency conversion, the introduction of a new tax system,

the creation of free economic zones, the reduction of the state's share in the economy are the results of fundamental reforms carried out over the past two years. These reforms differ from previous reforms in their vastness, intensity and radicalism.

It should be noted that, in a short period, strategies, state programs, concepts and road maps aimed at short and long term have been adopted.

The State Program for implementation of the Action Strategy on Five Priority Development Areas of the Republic of Uzbekistan in 2017–2021 in the "Year of Active Investment and Social Development", approved by the Decree №UP-5635 of the President of the Republic of Uzbekistan of January 17, 2019 is one of them.

Why does this year focus on "active investment and social development"? This means that, first of all, it is necessary to focus on the economy, i.e. implementation of measures for its development. Speaking of social development, it should be noted that in the modern world, the social orientation of business becomes relevant. Alongside with social reforms, all economic reforms must ensure the well-being of the population.

As the President of the Republic of Uzbekistan Sh. Mirziyoyev noted in his address to the Oliy Majlis of the Republic of Uzbekistan, "the development of our country and the well-being of the people are closely connected, first of all, with the effectiveness of reforms in the social sphere"[1].

One of the objectives of the State Program for "2019 - the year of active investment and social development" is the adoption of new editions of the Labor Code of the Republic of Uzbekistan (clause 135, deadline December 20, 2019) and the Law "On Employment" of the Republic of Uzbekistan (clause 143, deadline July 1, 2019)[2]. Despite the fact that these measures are part of the Social Development of this Program, they are directly related to the economy.

In previous years, there were attempts to adopt a new edition of the Labor Code of the Republic of Uzbekistan. In fact, nothing was done on this issue. But, now we can say that this problem is close to the real implementation. Since, investors are primarily employers, the Code is required to reflect "rules that go along with the interests of employee, to represent the interests of employer." Moreover, the main task facing the new edition of the Code is the introduction of a simplified procedure for the conclusion and termination of employment contracts, taking into account the peculiarities of labor.

Today there are many problems in the socio-economic sphere. So, according to the report of the World Bank's expert group on Uzbekistan it highlights four issues in the country:

- Underdeveloped employment;
- Insufficient number of enterprises;
- Export deficit;
- Poor energy efficiency.

In the report it is noted that there is a rapid growth in the number of able-bodied citizen in Uzbekistan - if the current growth rate continues, until 2030, Uzbekistan will be the fifth country on labor force in Europe and Central Asia (after Russia, Turkey, Ukraine and Poland). But due to various factors, a large proportion of citizens are unemployed, inactive, or working for abroad.

According to the experts, one of the biggest problems of today's Uzbekistan is the absence of medium-sized enterprises, which makes it possible to create additional jobs. In particular, four of five workers are employed in agriculture or the small services sector. In addition, every third of employees work on state enterprises and another third are self-employed [3]. In our opinion, the creation of effective labor legislation will be a major factor in the positive solution of these problems.

It should be emphasized that the codified labor laws are used in countries belonging to the Romano-Germanic legal system. In particular, Labor codes operate in the CIS countries, as well as some European countries (Poland, Hungary, Lithuania, Bosnia and Herzegovina, France, Czech Republic) [4]. In addition, you can notice the effect of the Labor Code also in countries belong to the Anglo-Saxon legal system. (Canada, Quebec) [5]. Moreover, it is necessary to indicate the existence of some countries (India), which are currently trying for the first time to adopt codified labor legislation [6]. However, it should be noted in this connection that in Western countries and countries of the Anglo-Saxon family of law labor legislation was formed by the adoption of special laws on specific labor law institutions. Here you can see the use of civil codes (Germany) regarding labor contracts [7].

Now we turn to some controversial points in the codification of labor legislation. It should be noted that the code is one of the main features of any independent branch of law. Of course, this point of view is relative and does not mean absolute truth. However, there are also branches of law that are not codified. Nevertheless, it can be said that the labor code is one of the main factors determining labor law as an independent branch of law. There should, however, be noted that Article 6 of the Law "On normative

legal acts" in the new edition, adopted December 24, 2012, the Code does not recognize as separate type of legal acts[8]. The new edition of this law was submitted for discussion of draft regulations, however, article 15 of the draft submitted again does not define the code as a separate type of regulatory document [9]. It should be noted that in both cases, national legislation takes the code into law. However, in the laws "On Regulatory Acts" of The Republic of Belarus, Kazakhstan and the Kyrgyz Republic gives a special definition to the code, besides it is designated as a separate type of regulatory act [10]. It is illogical that the national legislator, considering the code as a law, does not recognize it as a separate type of legal act. Because the Constitution, for example, is also a law (basic), but is recognized as a separate type of regulatory act. In this sense, the code should be considered as a type of regulatory act, not a law. The reason for that the code is a legal act aimed at regulating the system of social relations. Of course, there are different opinions among lawyers and legal scholars on this issue, which are also shown by differences between the laws of different countries.

At present, codes, including the Labor Code, are stable legislation adopted for long-term. It should be noted that among the countries of the former Soviet Union, Uzbekistan was the first country to adopt the Labor Code on December 21, 1995 (entered into force on April 1, 1996). From coming into force the Labor Code until today (March 1, 2019), a total of 29 laws were adopted, aimed at entering amendments and additions to its articles, as well as supplementing them with new articles[11]. The largest number of legislation regarding the introduction of amendments and additions to this Code was adopted in 2018 (5 Laws). On average, during one year, 1.3 laws were adopted, aimed at introducing amendments and additions to the Labor Code. As can be seen from this indicator, the Labor Code of the Republic of Uzbekistan rarely made changes and additions. However, in reality, such stability did not meet the interests of all participants in the labor relations and did not allow them to adapt to the new socio-economic conditions. As we have already noted, over the past few years, despite several attempts to reform the Labor Code, no major reforms have been carried out. At the same time, new social and labor relations (distant working, family entrepreneurship, domestic services and labor migration) arose in the society, and the problem of their legal regulation turned into a need to fill the law with norms aimed at strengthening the influence of labor relations on the economy and social sphere.

Today, scientists and experts have given various opinions, recommendations and suggestions for improving the Labor Code of the Republic of Uzbekistan. In particular, a prominent scientist in the field of Labor law M. Gasanov points out the following areas for improving the Labor Code:

- a clear definition in the Code of the scope of public law regulation of labor relations and public relations directly connected with them;

- adding to Labor Code of the Republic of Uzbekistan and some other legislative acts of supplements aimed at the further development and deepening of the social partnership in the workplace;

- filling gaps in the legal regulation of labor and public relations directly related to them, as well as the elimination of inaccuracies and contradictions in the Labor Code of the Republic of Uzbekistan ;

- identifying the content of the Labor Code of the Republic of Uzbekistan of the provisions that do not provide a balance of interests of employers and employees and making appropriate adjustments to this Code;

- addition of the Labor Code of the Republic of Uzbekistan with a chapter on the peculiarities of the legal regulation of labor for certain categories of workers;

- increasing the effectiveness of mechanisms to ensure and protect the labor rights of workers;

- dispensation from the Labor Code of the Republic of Uzbekistan of provisions on the legal regulation of social relations that are not the subject of Labor law, but are the subject of social security law [12].

Expert B. Musayev, in turn, proposes to develop a system of rules governing the procedure of conflict in labor relations in Uzbekistan, as well as to include them in the Labor Code of the Republic of Uzbekistan. He believes that in order to eliminate gaps in the Labor Code of the Republic of Uzbekistan and other labor laws, the Labor Code of the Republic of Uzbekistan should include a chapter XVI¹ - Application of the rules of private international law in labor relations"[13].

As the researcher D. Atadjanova emphasizes, when it comes to the labor rights of women and those involved in family responsibilities, it means not only benefits, but also restrictions. This indicates the specifics of the work of this category of workers. Taking this into account, the researcher proposes to refer to the paragraph "Additional guarantees for women and persons engaged in the performance of family duties" as "Features of the regulation of the work of women and persons engaged in the performance of family duties" [14].

Suggestions and recommendations of the scientists mentioned above are quite relevant. However, in our opinion, the new edition of the Labor Code of the Republic of Uzbekistan is not able to fully adapt to market relations, even if these changes and additions are made.

For example, employers today are in favor of abolishing many provisions of the Labor Code, which may allow them to operate freely in market conditions. In particular, payments to the employee for the period when he was not directly engaged in work put employers in a difficult position in organizational and financial terms. These payments consist of the following payments:

- Dismissal allowance;
- Replacement of the warning period with monetary compensation;
- Payment for reduced working hours;
- The preservation of wages to fulfill the interests of the state, the public and society;
- Payment for additional holidays;
- Maternity allowance;
- Child care allowance.

Of course, the rights and interests of workers are priorities. But if this priority has a negative impact on the balance of interests and ensuring economic growth, it can lead to dramatically negative consequences. A business in such a difficult condition cannot be profitable.

These and many other factors led to the introduction in the State Program “Year of Active Investments and Social Development” a clause regarding the development of a new edition of the Labor Code of the Republic of Uzbekistan. This Program identifies specific areas to which particular attention should be paid when developing a new edition of the Labor Code of the Republic of Uzbekistan. In particular, it includes:

- Privileged rules aimed at preventing informal labor, taking into account the requirements of a market economy;
- Provisions regarding the simplified procedure for the conclusion and termination of an employment contract, based on the characteristics of labor, reflecting the interests of both the employer and the employee;
- The provision of rules aimed at the implementation of the recommendations of the International Labor Organization and the direct regulation of labor relations [15].

By analyzing the processes occurring in states with a similar system of law, when developing a new edition of the Labor Code, two concepts can be put forward. The essence of the first concept is that it preserves the general philosophy and the essence of the former Labor Code, but in order to improve it, all gaps are eliminated by making changes and additions. However, these updates are limited to the implementation of tasks to strengthen the legal regulation of labor relations, with virtually no effect on economic growth. As a result of such a reform, a “sharply change” is not expected. So, for example, such changes were observed in the adoption of new editions of the Labor Code of the Republic of Kazakhstan (2015) and the Labor Code of the Republic of Tajikistan (2016) [16].

The second concept involves the creation of labor legislation, which reflects the “fundamental changes”, which fully fit into the new socio-economic transformations. An example of this is the Labor Code of Georgia. The opinion of the head of the Center for Economic Development Y.B. Yusupov on labor law reform in Georgia is interested. He stresses that the Labor Code of Georgia was similar to ours, and in practice was cluttered with Soviet norms, which could no longer work in the modern period. “They wrote a very small Labor Code, the main content of which was “look into the contract”. In other words, “Look at the agreement between the employee and the employer who know best how to work in mutual agreement” [17]. In fact, in 2006, Georgia replaced its former Labor Code, which remained from former Soviet times, with a new Code, aimed at ensuring its compliance with international and European standards. The Code represents organic law (a fundamental law governing the basis of the state device and has a fundamental constitutional legal status), consisting of a total of 55 items [18]. However, according to experts, this Labor Code has created problems related to the lack of provisions on working time, dismissal, staff reduction, gender equality. You can even notice very sharp remarks. For example, you can find opinions that the final edition of this law was subjected to the aggressive influence of the business lobby of the American Chamber of Commerce [19]. However, as noted by the Ministry of Reform of the Government of Georgia, over the past 20 years, no fundamental reforms have been implemented in the area of labor relations. S. Djankov praised the reforms in Georgia and said that the labor code is one of the most progressive in the world and that it is among the three most fundamental reforms, such reforms have also been carried out only in Mexico and Serbia [20]. Analyzing these judgments, we can say that the Georgian Labor Code was developed in a more convenient way of doing business, of course, employers are more interested in this, however, many provisions have been lost that ensure respect for the rights and interests

of employees. This Code can be defined as the law, to the greatest extent possible provides for the legal regulation of labor relations contract. However, the Code abolishes most of the minimum requirements that the employer had to comply with. Thus, Georgia focused on creating the most attractive business environment and attracting investments.

Currently, Ukraine is also implementing a similar Georgian experience in reforming labor legislation. Although the Ukraine has not yet completed measures to replace with the new Labor Code (adopted on first reading in 2003 and 2015) [21], it can be assumed that one of the main goals of this Code will be to ensure economic growth.

It is highly likely that Uzbekistan, when adopting a new Labor Code, will accept the first concept. The reason is that today in the whole world business has become socially oriented. In developing the Labor Code in Uzbekistan, the new edition focuses its attention on the provisions regulating the balance of interests of workers, business and the state.

Nevertheless, it is advisable to include in the content of the new edition of the Labor Code the following opinions and provisions:

- Code should be structurally abbreviated. At the same time, the General part and the Special part should be abolished, the development of public relations (Labor law) and private relations (Employment law) is necessary;
- Improving existing recruitment procedures and rules on the basis of an employment contract aimed at reducing the informal labor sector;
- Simplification of the grounds and procedure for termination of an employment contract and review of the scope of legal guarantees for employees;
- The development of norms aimed at enhancing the role of trade unions in representing and protecting the rights of workers;
- The creation of new rules aimed at the development of procedural rules;
- Improving the application of the norms of the labor legislation of the Republic of Uzbekistan in relation to foreign citizens and stateless persons, as well as foreign companies.

At the same time, when developing a new edition of the Labor Code of the Republic of Uzbekistan, it is necessary to achieve the following main tasks:

The rejection of difficult mechanisms of legal regulation and the establishment of a simplified procedure;

- Expansion of contractual freedoms;
- Problem solving through partnerships;
- Increase the accuracy of mechanisms;
- Identification of ways to disable passive norms or their assets from the active.

To conclude, we want to note that the new edition of the Labor Code of the Republic of Uzbekistan should ensure the economic development of the country through the provision to parties the free choice of their rights and responsibilities in the regulation of labor relations. We also believe that in order to enhance the impact of labor relations on the economy, it is necessary to reduce the role of imperative norms.

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