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16/02/2012 - The difference between an employment contract and a service contract in Kyrgyzstan

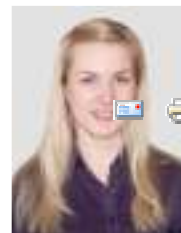
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Prepared by Svetlana Lebedeva, associate at Lorenz International Law Firm, Bishkek, tel.: 0312 900 100; e-mail: s.lebedeva@lorenz-law.com

At hiring an employee the employer is often faced with the following choice: to conclude an employment contract or a civil contract (service agreement, contractors' agreement etc. In this article the service contract is taken as the subject).

Frequently, the employer fails to understand the difference between these contracts. Nevertheless, the difference is essential. An incorrect qualification of the contracts may lead to negative consequences (to pay wages, moral damage etc), mostly for the employer. That is why it is very important to determine a way to design in a proper way the relationship between the employer and employee beforehand.

Both employment and service contracts can be concluded between the parties with the purpose to perform work. In concluding a service agreement, the relationship between the two parties is recognized as a civil relationship. Therefore, the party (employee), rendering services, is deprived of the warranties provided by the Labor Code of the Kyrgyz Republic (sick leave, annual paid leave etc.). Thus, the main negative effects for the potential employees are the



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absence of the right of annual paid vacation, sick leave, compensations, etc. On the other hand a service contract is more advantageous for the employer and gives the latter more possibilities. Pursuant to the labor laws of the Kyrgyz Republic, the employment contracts under these laws are mostly intended to protect the rights of the employee.

To clarify the difference between both contracts, below is a short comparative analysis of an employment and a service contract:

The employment contract:

- a) is governed by the Labor Code of the Kyrgyz Republic, which is more protective to the interests of employees;
- b) the relationship between an employee and an employer are concluded in the form of an employment contract;
- c) regulates the working process (working time, job description etc.);
- d) the employer shall pay to the tax and social authorities a relevant amount deducted from the salary of the employee;
- e) the employer shall pay to the employee various compensations (for temporary disability, sick-leave etc.);
- f) the termination of the employment contract is possible at the initiative of the employee/employer, in circumstances beyond the control of the parties.

The service contract:

- a) is governed by the Civil Code of the Kyrgyz Republic, which provides equal rights for the parties;
- b) the relationships between the parties are concluded in the form of a service agreement;
- c) the main purpose of the contract is to achieve a certain work (construct a building etc.); service contracts do not regulate the working process;
- d) no compensations are provided by Kyrgyz law, only fines and other civil liability compensations could be provided by Kyrgyz law and/or by the agreement;
- e) the termination is possible on the following grounds: performance of the services; agreement by the parties; court decision; force majeure, etc.

Since the difference between employment and service contracts is essential, the employer should be careful in choosing the type of contract to avoid any misunderstandings.

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