

19 May 2015

To our clients and friends

INFORMATION LETTER

concerning important amendments to the employee accident insurance system and compensation for harm to life and health

Starting 10 May 2015, Kazakhstan amended the employee accident insurance system and procedure for compensation for harm to life and health¹. The key amendments include as follows:

1. Limitation of Compensation by the Employer of Expenses Incurred in Connection with Injury to Employee's Health

From now on, the employer causing harm to the employee's health *associated with 5%-29% occupational capacity loss degree* will be obligated to reimburse the employee's expenses associated therewith in respect of each case *within the limits of 250 MCI²* as of the date of payment (paragraph 1 of Article 937 of the Civil Code, paragraph 4 of Article 164 of the Labor Code). Previously, the expenses were subject to reimbursement in full.

2. Limitation of Scope of Mandatory Insurance of Employees

- The employee's lost income (profit) is no longer insured and will be reimbursed by the *employer itself* liable for the harm, *if* the employee has lost 5%-29% of occupational capacity paragraph 1 of Article 19 of the MIE Law).
- In case of losing 30%-100% of occupational capacity the payments are still to be made by an insurance company. The payments are based on the average salary (profit) taken in the amount *not to exceed 10 MS³* as of the date of entering into insurance agreement (paragraph 1 of Article 19 of the MIE Law).
- The insurance payment amount is determined *less the social payment* from the State Social Insurance Fund stipulated in case of a loss of capacity to work (paragraph 1 of Article 19 of the MIE Law).

¹ The Law No. 311-V of the Republic of Kazakhstan "On Introduction of Amendments into Certain Legislative Acts of the Republic of Kazakhstan on Insurance and Islamic Financing" dated 27 April 2015 was published on 29 April 2015. The part of the Law under consideration was put into effect upon expiration of 10 calendar days of the date of its official publication.

The amendments were introduced into 41 Laws. This Information Letter attaches importance to those amendments introduced into the Kazakhstan Civil Code and Labor Code and the Law on Mandatory Insurance of Employees against Accidents in the Course of Performing Labor (Official) Duties dated 7 February 2005 (the **MIE Law**).

² **MCI** – monthly calculation index established for a relevant financial year by the National Budget Law.

³ **MS** – minimum salary established for a relevant financial year by the National Budget Law.



- The insurer *does not reimburse* the expenses included in the *guaranteed scope of free medical aid ("GSFMA")* (paragraph 2 of Article 19 of MIE Law). The employer is no longer obligated to reimburse such expenses as well (paragraph 4 of Article 164 of the Labor Code).
- Since in case of applying to GSFMA system the employee incurs no expenses associated with payment for GSFMA services, we believe that since adoption of this norm the insurers and employers will not have to reimburse the employee's expenses, if they might have been received at the expense of GSFMA, but the employee applied to a commercial medical organization providing similar services.
- *The limits of insurance payments for reimbursement of additional expenses* in connection with injury to health *have been half-reduced* (paragraph 2 of Article 19 of the MIE Law).

3. Amendment of the Insurance Premium Calculation Procedure

- The "*personnel categories*" no longer exist. The insurance rates depend only on the occupational risk class of the organization's key economic activities (in total – 22, as before).
- The insurance rates are now *the same* for all insurance companies; the "range" of insurance rates (minimum and maximum rates) has been cancelled.
- The insurance rates for the 2nd and 3rd occupational risk classes⁴ have been *increased*; for the 21st and 22nd classes⁵ – *reduced*. With respect to other classes – determined in the amount between the previously established minimum and maximum thresholds (paragraph 2 of Article 17 of the MIE Law).
- The minimum amount of insurance is based on the employee's monthly income *not exceeding 10 MS multiplied by 12* (paragraph 1 of Article 17 of the MIE Law).
- In any case *the insurance premium cannot be less than one MS* (paragraph 2-1 of Article 17 of the MIE Law).
- *Branches* of organizations carrying out types of activities different from the key types of activities of such organizations are *separately considered* for the purposes of insurance premium calculations (sub-paragraph 6 of paragraph 6 of Article 11, paragraph 3 of Article 17 of the MIE Law).
- Changes in labor remuneration fund (same as before) and *authorized staff size* (novelty) entail *changes in insurance amount and insurance premium* by agreement of the parties to an insurance agreement (paragraph 1 of Article 17 of the MIE Law). In this case it is supposed that the *insurance amount and insurance premium* may change to increase or decrease, as the case may be.
- From now on, occurrence of an insured event *during the effective term of an insurance agreement* (but not during the effective term of the previous agreement) may entail

⁴ The 2nd occupational risk class includes wholesale and retail sale, except for the sale of automobiles and motorcycles, and other types of economic activities. The 3rd occupational risk class includes medical activities, other healthcare activities, activities in the sphere of architecture, engineering surveys, provision of technical advice in these spheres and other types of economic activities.

⁵ 21st occupational risk class – production of furnaces and kiln burners, 22nd class – industrial gas production.

increase in insurance premium by an adjustment coefficient, the criteria for determining which have been significantly amended (Article 17-1 of the MIE Law).

4. Other Amendments

There are some other interesting amendments, specifically, the law-maker:

- limited payments associated with reimbursement for harm to injured persons in respect of income lost in the course of performing labor (official) duties in case of reaching the *age of retirement*;
- expanded and made more specific the *list of documents to be submitted* to receive insurance payment;
- changed the procedure for indexation (increase) of compensation for harm in connection with the increase in the cost of living, making it dependent on the "*average value of the forecasted inflation rate*" without specifying, however, who is to prepare such forecast and what is the period to be taken to calculate the average value;
- cancelled the possibility to pay insurance payment directly to a person providing health rehabilitation services;
- introduced into the MIE Law the provisions on the type of economic activities to be selected, if there are *several* types with the organization;
- clarified who will pay the insurance payment in respect of *previously occurred* events in case of termination of an insurance agreement;
- extended the use of *annuity agreement* and *monthly* payment procedure with respect to lost income payments in connection with establishing occupational capacity loss degree for a term *less than 1 year*. Such payments were previously made by an insurer in full on a one-time basis.

5. Effect of the Law

The amendments related to mandatory employee accident insurance cover the *cases of establishing or extending (re-examination) occupational capacity degree loss, which occurred starting 10 May 2015*.

Thus, in the given cases the new regulation is to apply, regardless of the text of previously concluded insurance agreement, according to which compensation for harm will be paid.

Accordingly, with respect to cases arising before 10 May 2015, compensation will be paid pursuant to the old law.

The amendments generally reduced the protection of employees and improved the insurance companies' position. The occurred amendments may be ambiguous for the employers; time will show.

Best regards,

AEQUITAS Law Firm