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## **Legal analysis of the implementation of insurance programs in the Republic of Kazakhstan to prevent accidents at work and assess the need for investments in safe work at the expense of the insurance fund formed in the compulsory accident insurance system**

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**Abstract.** *Accident insurance systems that adhere to international standards and approaches form an essential element of occupational safety management systems, serving to enhance working conditions while mitigating occupational risks while safeguarding our country's workforce. Insurance is one of the most cost-effective regulatory mechanisms available today for improving working conditions while safeguarding workers.*

*As part of the Order of the Prime Minister's of the Republic of Kazakhstan dated December 29, 2020 to develop and implement the National Labor Protection Program outlined there, which mandated developing an effective National Labor Protection System by uniting government with social partners, on January 20, 2022 the Concept for Labor Safety until 2030 was approved. As part of the implementation of the Action Plan to Increase Occupational Safety in Kazakhstan until 2025 approved by Decree of the Government of the Republic of Kazakhstan on June 17, 2021, No 419, several measures designed to strengthen occupational safety management systems within enterprises have been introduced.*

**Keywords:** *accident prevention, safe work, insurance fund, compulsory accident insurance, assessment of investment needs, labor protection, occupational risks, labor resources.*

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### **Introduction**

This article presents a legal analysis of accident prevention insurance programs available in Kazakhstan as well as an assessment of occupational safety investment needs through the mandatory accident insurance system, with particular attention paid to occupational safety insurance funds within mandatory accident systems. All this was undertaken as part of a scientific and technical program "Economic Issues of Safe Labor and Institutional Transformations in the Insurance Mechanism in Republic of Kazakhstan" (BR11965728) being funded under program-targeted financing of research

by Republican Research Institute for Labor Protection under Ministry of Labor and Social Protection of Republic of Kazakhstan Ministry.

Noteworthy is the fact that over the course of its independence period, due to changes within society, state, and the constitutional-legal system, numerous political, legal, and economic institutions of the state have undergone significant modifications. These processes could not neglect to examine and enhance the theoretical and legal foundations of an accident insurance institution whose importance in terms of assuring occupational safety in Kazakhstan cannot be overemphasized. On the legislative agenda

is the imperative for lawmakers to establish fundamentally new socio-economic and legal foundations for this institution, including updating concepts, criteria, and legislative measures relating to workplace injuries and occupational disease risks, returning workers back into gainful employment while receiving remuneration and socialization and many other social guarantees associated with being part of Kazakhstan as a social state.

These issues have come under legislative review, with legal definition of social accident insurance in the workplace in Kazakhstan providing an example of progressive development norms regarding enterprise employee insurance that correspond to historical developments of state functioning.

Contemporary constitutional and legal regulations of occupational social accident insurance is intimately connected with occupational safety. As part of social protection of labor relationships, this institution serves to collect the fundamental rules needed for structuring this process in Kazakhstan.

Legislative establishment of mandatory accident insurance began shortly after Kazakhstan gained independence, during the early stages of political consolidation. Over its years of independence, legislative activities of Republic of Kazakhstan revealed that labor protection remained at the top of their legislative priorities list.

Undoubtedly, an elaborate system of constitutional and legal norms has been put in place within Kazakhstan in this field, comprising provisions from both its Constitution, laws of Kazakhstan and subordinate normative legal acts adopted there. Let us delve deeper into their characteristics.

Since independence, the Constitution of Kazakhstan has laid down key normative principles pertaining to labor protection. Additionally, its text includes provisions which provide framework for economic growth and cooperation - with labor protection issues playing an integral part.

Article 1, Paragraph 2 of the Basic Law states that fundamental principles for Republic's activities include public consent and political stability, economic development to benefit all the people, Kazakhstani patriotism and democratic methods such as

voting at republican referendum or Parliament of Republic of Kazakhstan to resolve most important state life issues democratically including voting or republican referendum or parliament of Republic of Kazakhstan for their resolution; Paragraph 2 of Article 24 Constitution enshrines guarantees which secure individual's rights for safe working conditions with fair remuneration without discrimination as well as social protection against unemployment as set forth.

Since independence, Kazakhstan has also developed an elaborate set of norms which regulate categorical and conceptual terms like labor protection and employee accident insurance in addition to its constitutional framework. Here is an outline of their development within Kazak law:

As noted by A.V. Blinova when discussing the historical stages of insurance legislation formation in Kazakhstan, its foundation can be seen by looking back over its development over time; insurance legislation in the Republic of Kazakhstan stems from various laws like those found within its Constitution of 1995 as well as provisions of other statutes like its Civil Code's Special Part since July 1, 1999; Tax Code as per January 1 2009 and Law 182000 («On Insurance Activities»); June 2003 «Guarantee Fund for Payment of Premiums,» January 11 2007 «On Licensing», and Law 182000 «On Licensing» [1].

Law of Kazakhstan No 252-III provides an important foundation for «labor protection» within Kazakhstan's legal framework. According to this legislation, its definition includes not only systems which guarantee citizens' life safety in addition to those listed in 2004 law but also modifications made, and an interpretation given about what an «occupational safety management system» actually consists of [1].

Legal grounds for the functioning of an institution in Kazakhstan stem from its adoption of the «Law on Mandatory Insurance of Employees against Accidents in the Performance of Their Employment (Official Duties)» in 2005 [5]. Prior to its passage, workplace damages due to events beyond employee control were compensated according to civil law norms or sometimes enforced through administrative pressure; and

individual employees often needed to prove fault when an accident took place.

Notable aspects of this normative legal act were the establishment of fundamental concepts regarding relationships in its field; objects and subjects covered by mandatory employee insurance against accidents in performance of employment duties; goals and principles related to this insurance coverage, etc [5].

Law of Kazakhstan of February 7, 2005, No 30-III on Mandatory Insurance of Employees against Accidents Occurring during their Performance of Official Duties contains definitions such as an «insurance event» and employee accident insurance in paragraph 6 and 8 respectively [5].

Legislative definition of an «insurance event» encompasses any accident in which employees experience injuries while performing official duties due to exposure to harmful and/or hazardous production factors that lead to work-related injury, sudden health deterioration or poisoning those results in professional employability loss, occupational disease or even death [5].

Employee accident insurance can be defined as «an arrangement to safeguard both property interests of employees, as well as life and health of any worker who experienced harm while performing employment (official duties)» [5]. Unfortunately, regardless of its specificity in law or otherwise, employee accident insurance remains undefinable [2.]. Likewise in Kazakhstan's law No. 286-VI «On Mandatory Social Insurance,» from December 26, 2019, doesn't provide one [2].

### Research Methods

Concept for Implementation of National Labor Protection System in Kazakhstan the Concept outlines tasks intended to establish an efficient risk-oriented national labor protection system in Kazakhstan that adheres to market economic principles; utilizes best global practices; and serves as an ideal model of active collaboration between employers and workers – three priorities which reflect state institutions working actively with social partners (i.e. employers/workers).

Current scientific research on «Economic Issues of Safe Labor and Institutional

Transformation of the Insurance Mechanism in Kazakhstan» will inform, by 2023, a project designed to strengthen mechanisms for preventing industrial injuries while strengthening mandatory accident insurance systems at workplaces as per Item 12-1 of Action Plan for Ensuring Safe Labor until 2025.

Additionally, legislative acts regarding safety and labor protection have been passed:

Order of Kazakhstani Ministry of Labor and Social Protection of Population No 2023-3 is to be published and read. «Amendments to Certain Orders of the Minister for Healthcare and Social Development of Kazakhstan», implemented amendments to Rules for Employer Development of Safety and Labor Protection Instructions approved by Order no.98 dated November 30, 2015, by amending them accordingly. The Porsche 927 was engineered as the ultimate performance machine and remains one of the highest performing production cars ever released into production today. Deregulation affects rules and timelines related to providing workplace safety training, briefing and knowledge verification to employees, managers or those charged with maintaining workplace protection as outlined by Order No. 289. No. 2334 of Kazakhstan, issued on December 25, 2015, by its Minister of Healthcare and Social Development is Track 221. Additionally, these rules relate to Allocating Job Quotas for Young People Who Have Lost Parent Care Since Adulthood and Are Graduates from Educational Institutions approved by Order 412 by Minister of Healthcare and Social Development of Republic of Kazakhstan on May 26, 2016;

Order No 550 issued by the Minister of Labor and Social Protection of Population of Republic of Kazakhstan was published on December 31, 2022, to amend his prior Order No 340 of August 27, 2020 for «Amendments to Approve Standard Occupational Health Safety Management System;» this December was made.

Order No 524 issued by the Minister of Labor and Social Protection of Population on December 28, 2022, was entitled, «Amendments to Order issued on September 11 2020 by Minister of Labor and Social Protection of Population No 363 Approving Rules to Manage Occupational Risks;

Order No.222 was published by the Minister of Labor and Social Protection of Population of Republic of Kazakhstan on June 28, 2022 as «Amends and Additions to Order 1053 issued on December 28 2015 by Minister of Healthcare and Social Development to Approve List of Industries Workshops Professions Positions Heavy Work Harmful and Hazardous Working Conditions Reducing Working Hours Additional Paid Annual Leave Increase Wage Rates Provision Rules;». It contained industries workshops professions positions heavy work harmful hazardous working conditions reduced working hours increased paid annual leave benefit Rate Provision Rules as per rules for their provision by Provision Rules as per rules for their provision.»;

«Order of the Ministry of Labor and Social Protection of Population in Kazakhstan no 108 from March 31, 2022, titled – Amendments to Order No 349 by Minister of Labor from September 2, 2020 Regarding Approval of Interindustry Standard Staffing Levels for Occupational Safety Services.

Social payments to victims of workplace accidents will come from three sources as part of their protection: State social disability benefits provided through the republican budget; payments for lost working capacity from the State Social Insurance Fund and compensation payments by insurance companies if victims had coverage pursuant to Kazakhstan Law No. 307 on «Mandatory Workers' Liability Insurance against Accidents While Fulfilling Their Official Duties».

Kazakhstan requires workers' accident insurance as mandatory coverage; premiums depend on factors including the economic activity type and class as well as incidents at work per employer.

Compulsory accident insurance systems that promote competition among companies as well as profitable enterprises has led to greater employer responsibilities regarding technical safety, labor protection, financial motivation to prevent insurance cases at their enterprise, leading to an apparent reduction in workplace accidents - an undoubtedly positive trend.

Turning back to a system with 100% state participation may reduce employer incentives and economic motivation to enhance working

conditions, prevent workplace accidents or occupational diseases and improve working conditions for their staff.

### **Results and analysis**

Although Kazakhstan adopted state development programs for the insurance market between 2004-2006 [8], insurance in Kazakhstan from 2000 to 2002 [10], and Resolution no 441 of June 26, 2019, to Approve a Roadmap for Reducing Industrial Injuries and Jobs with Harmful Working Conditions in 2019-2023 dated 26 June 2019 revoked soon thereafter, there remain unanswered questions as regards to defining and understanding this concept and its essence.

Historical retrospectively, these types of documents stand as testimony to their historical importance; they laid down the framework of what today we refer to as social insurance against industrial accidents (or «Social Accident Cover») for countries like Kazakhstan and Central Asia. Yet closer scrutiny reveals a gap in economic and legal characterization.

According to the International Labour Organization, every year more than 12,000 workers die due to workplace accidents in former Soviet Union nations [7]. An analysis of statistical data provided by Kazakhstan's Ministry of Labour and Social Protection of Population revealed violations to labor legislation norms across different regions in Kazakhstan. As one example, «in North Kazakhstan region during the first nine months of 2022 there were 24 workplace accidents with 30 individuals involved». Inspectors from the Department of Safety and Labor Protection Control identified 319 violations of current labor legislation of Kazakhstan, such as 186 related to safety and labor protection as well as 133 concerning labor relations. As a result of these infringements, employers who allowed these violations received 141 mandatory orders mandating correction in accordance with law» [7].

Today in Kazakhstan and Central Asian nations where economic development, models of socio-economic reform and competition for regional leadership remain unclear or at an impasse, the question of social insurance against industrial accidents (also referred to



as occupational liability coverage) as well as developing common norms imposing legal responsibility upon officials responsible for workplace social insurance remains the centerpiece.

An analysis of national legislation indicates a gap in this regard [2-4-6], necessitating consideration of amending existing legislation to address it [2;4;6]. Such changes would help acknowledge Kazakhstan's achievements in workplace social insurance on an international scale and facilitate knowledge transfer with developed European nations and elsewhere; further, we believe there exists an urgent requirement in Kazakhstan to enhance laws in this field, taking account of international experiences and best practices.

Within the context of a new social contract (social agreement), government, by way of various programs and tools, provides conditions that enable employers to open new job opportunities.

As per this social contract, employers accept responsibility for not only providing an employment package - namely social benefits - but also creating safe working environments by protecting workers against accidents at work as well as occupational diseases.

Attaining this goal requires mandatory social insurance against accidents, which results from deliberate efforts to implement fundamental principles, schemes, models, and programs of both the International Labour Organization as well as more advanced foreign countries and organizations.

Insurance as part of the financial sector possesses its own economic fundamentals, its unique formation process and development pattern as well as impactful regulatory impacts across multiple branches of legislation.

Accident insurance at work (commonly referred to in foreign practice), or mandatory social insurance against injuries from work activities related to official and workplace duties requires further modernization.

Though ongoing attempts have been undertaken to adapt national legislation to international standards, today we still face problems related to national legislation and enforcement of compliance with it. One such problem lies with our compulsory insurance system against work-related accidents - its

effectiveness needs improvement as it pertains to improving measures designed to prevent occupational injuries as well as providing compensation in cases arising due to accidents on the job or occupational diseases.

Current problems involve low levels of insurance coverage (33% or less have signed relevant mandatory contracts for work-related accidents), social injustice in compensation of insured events due to «mixed liability», as well as lack of reliable statistics on insured events and injuries at work. There is also no personalized accounting of victims of industrial injuries; differences exist between national and departmental statistics of accidents at work; no integrated database system linking government agencies and organizations exist, among others.

At its heart lies an examination of institutional infrastructures - specifically operators of mandatory occupational accident insurance such as life insurers - in particular their effectiveness at meeting their mission while remaining financially sound. Unfortunately, there appears to be an imbalance towards commercial activity while their terminology lacks such programs which in reality serve multiple functions simultaneously.

An analysis of past events indicates that occupational accident insurance programs have become integral elements of society in advanced nations around the globe and demonstrated both their efficiency and social significance.

Occupational accident insurance programs first emerged as global practice during the XIXth century in Europe, under Chancellor Bismarck in Germany who passed a national program law.

In some countries, such programs follow a preventive philosophy aimed at encouraging improvement to working conditions and safety measures to minimize accidents, while simultaneously encouraging employers to pay insurance premiums according to risk level as well as supporting and financing initiatives aimed at raising awareness and prevention (improved insurance literacy).

There are also multiple global trends which emphasize the urgency of reforming occupational injury insurance systems, such as:

- Shifting characteristics of occupational risks owing to emerging and advanced technologies, new methods for risk prevention, occupational medicine developments and rehabilitation services.

- Economy changes driven by global competition and structural shifts such as redistribution of workforce from industrial production into service sector jobs.

- Shifting workplace arrangements, evidenced by non-standard forms of employment such as part-time work, temporary contracts and contractual employment as well as increasing levels of individual entrepreneurship and new technologies that reduce physical labor requirements.

- Changes in qualitative characteristics of the workforce due to increasing educational levels: an increasing proportion of female workers; an aging workforce caused by an extended life expectancy and declining birthrate.

Based on international practices for workplace accident insurance in economically advanced nations, further modernizing of national workplace accident insurance systems should take into account improving legal regulations to increase employer involvement in reducing workplace accidents and occupational diseases, including developing effective preventive measures against occupational diseases; an efficient rehabilitation policy to alleviate disability consequences; restoration of lost work capacity restoration as well as selective mortality reduction measures.

The International Labor Organization emphasizes the need for an integrative strategy to enhance mandatory workplace accident insurance systems and occupational disease prevention through comprehensive prevention, rehabilitation, and compensation measures.

An analysis of existing legislation reveals the following. National regulations generally align with international standards, however there may be deficiencies, gaps and inconsistencies within them.

Differences in terminology definitions. Article 1, Paragraph 27 of Kazakhstan's Labor Code defines work-related accidents as any impact involving harmful and/or hazardous

industrial factors upon an employee of either of two sending parties while performing job (official) duties or tasks assigned by their employers or receiving parties which causes industrial injuries, sudden health deterioration or poisoning that leads to temporary or permanent disability or death of said sending party employee<sup>1</sup>.

Under Kazakhstani Law 'On Mandatory Insurance for Employees in Performing Labor (Official) Duties', an accident can be understood to mean any occurrence that leads to industrial injury, sudden health deterioration or poisoning during performance of official duties; ultimately resulting in either professional capacity impairment, occupational disease, or death and is covered under Article 16-1 of this Law<sup>2</sup>.

According to Kazakhstan Law «On Mandatory Insurance of an Employee for Accidents during Performance of Labor (Official) Duties», accidents are defined as insurance events occurring while performing official or labor (official) duties due to exposure to harmful and/or hazardous industrial factors, leading to industrial injuries, sudden health deterioration or poisoning that requires medical treatment resulting in loss of professional capacity, occupational disease or death as per Article 16-1<sup>3</sup>.

Noteworthy is the Law of Kazakhstan «On Mandatory Insurance for Employees Ascertained of Accidents during Performance of their Labor (Official) Duties», which makes reference to provisions from Kazakhstan's Labor Code not found within its current version of legislation<sup>4</sup>.

<sup>1</sup> Трудовой кодекс Республики Казахстан от 23 ноября 2015 года № 414-VЗРК. <https://adilet.zan.kz/rus/docs/K1500000414>.

<sup>2</sup> Трудовой кодекс Республики Казахстан от 23 ноября 2015 года № 414-VЗРК. <https://adilet.zan.kz/rus/docs/K1500000414>.

<sup>3</sup> Закон Республики Казахстан Об обязательном страховании работника от несчастных случаев при исполнении им трудовых (служебных) обязанностей от 7 февраля 2005 года № 30 <https://adilet.zan.kz/rus/docs/Z050000030>. Дата обращения: 23.10.2022 г.

<sup>4</sup> Трудовой кодекс Республики Казахстан от 15 мая 2007 года № 251. Утратил силу Кодексом Республики Казахстан от 23 ноября 2015 года № 414-VЗРК <https://adilet.zan.kz/rus/docs/K070000251>. Дата обращения: 23.10.2022 г.

An analysis of amendments and additions made to Kazakhstan's Law «On Mandatory Insurance of an Employee against Accidents Incurred during Performance of Labor or Official Duties,» shows that since November 23, 2015 and January 1 of 2016, respectively, 18 amendments have been implemented, the last ones on September 12 2022; none address changes necessary in Article 16-1 or 22.

### **Conclusion/Summary**

Each of the issues identified have unquestionably had an adverse impact on the comprehensive development of workplace accident insurance. Our suggested solution includes standardizing conceptual framework to a uniform definition of workplace accidents (unification).

To enhance the effectiveness of mandatory employee accident coverage under Kazakhstani law, institutional infrastructure improvement could include creating a single fund (operator/fund) that offers social insurance against accidents with threefold functionality such as compensatory, rehabilitative and preventive coverage. Therefore, Law «On Mandatory Employee Insurance against Accidents While Executing Labor (Official) Duties» must incorporate «insurance program functions.»

Comprehensive measures must include setting up a system to record accidents centrally and integrating information systems of government agencies as well as any interested organizations.

Furthermore, all employees should have easy access to reporting workplace injuries; this will significantly decrease underreporting of workplace accidents in the long run.

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### **ҚР-да өндірістегі жазатайым оқиғалардың алдын алу жөніндегі сақтандыру бағдарламаларының іске асырылуын құқықтық талдау және ЖОМС жүйесінде қалыптастырылатын сақтандыру қорының қаражаты есебінен қауіпсіз еңбекке инвестициялардың қажеттілігін бағалау**

**Аңдатпа.** Өндірістегі жазатайым оқиғалардан сақтандыру жүйелері халықаралық стандарттар мен тәсілдерге сәйкес еңбекті қорғауды басқару жүйесінің ажырамас бөлігі болып табылады. Сонымен қатар, сақтандыру – бұл еңбек жағдайларын жақсарту, кәсіби тәуекелдерді басқару және елдің Еңбек ресурстарын сақтау бойынша ең тиімді реттеуші механизм.

ҚР Премьер-Министрінің 2020 жылғы 29 желтоқсандағы тапсырмасын орындау шеңберінде еңбекті қорғау жөніндегі ұлттық бағдарламаны әзірлеу және іске асыру мақсатында оған сәйкес әрбір ел Үкімет пен әлеуметтік әріптестердің бірлескен күш-жігері шеңберінде еңбекті қорғаудың тиімді ұлттық жүйесін әзірлеуге тиіс 2022 жылғы 20 қаңтарда Қазақстан Республикасындағы еңбек қауіпсіздігі тұжырымдамасы 2030 жылға дейін бекітілді.

Қазақстан Республикасы Үкіметінің 2021 жылғы 17 маусымдағы № 419 қаулысымен бекітілген Қазақстан Республикасында еңбек қауіпсіздігін қамтамасыз ету жөніндегі 2025 жылға дейінгі іс-қимыл жоспарын іске асыру шеңберінде кәсіпорындарда еңбекті қорғауды басқару жүйесін жетілдіруге бағытталған бірқатар іс-шаралар іске асырылды.

**Түйін сөздер:** жазатайым оқиғалардың алдын алу, қауіпсіз еңбек, сақтандыру қоры, жазатайым оқиғалардан міндетті сақтандыру, инвестициялардың қажеттілігін бағалау, еңбекті қорғау, кәсіптік тәуекелдер, еңбек ресурстары.

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### **Правовой анализ реализации в РК программ страхования по предотвращению несчастных случаев на производстве и оценка потребности инвестиций в безопасный труд за счет средств страхового фонда, формируемого в системе ОСНС**

**Аннотация.** Страховые системы от несчастных случаев на производстве в соответствии с международными стандартами и подходами являются неотъемлемой частью системы управления охраной труда. Кроме того, страхование – это наиболее эффективный регуляторный механизм по улучшению условий труда, управлению профессиональными рисками и сохранению трудовых ресурсов страны.

В рамках исполнения поручения Премьер-министра РК от 29 декабря 2020 года в целях разработки и реализации национальной программы по охране труда, согласно которой каждая страна должна разработать эффективную национальную систему охраны труда в рамках совместных усилий правительства и социальных партнеров 20 января 2022 года утверждена Концепция безопасности труда в Республике Казахстан до 2030 года.

В рамках реализации Плана действий по обеспечению безопасности труда в Республике Казахстан до 2025 года, утвержденного Постановлением Правительства Республики Казахстан от 17 июня 2021 года № 419, реализован ряд мероприятий, направленных на совершенствование системы управления охраной труда на предприятиях.

**Ключевые слова:** предотвращение несчастных случаев, безопасный труд, страховой фонд, обязательное страхование от несчастных случаев, оценка потребности инвестиций, охрана труда, профессиональные риски, трудовые ресурсы.



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