

CHANGE OF CONTRACT OF AN EMPLOYEE DUE TO TRANSFER TO ANOTHER JOB

Madumarova Nilufar Muhammadovna
Lecturer of the Department of Legal Education
Fergana State University

A B S T R A C T	K E Y W O R D S
<p>The employee shall not be transferred to another job if there are contraindications for the employee based on his/her health status, confirmed by a medical report.</p> <p>When transferring an employee to another job, the date by which he/she must begin the work he/she is transferred to must be determined.</p>	

Introduction

Depending on the period for which the employee is transferred to another job, the types of transfers are divided into permanent and temporary.

If the employee is temporarily transferred to another job, the period of such transfer must be determined.

The period of temporary transfer of an employee to another job can be determined by:

indicating the total duration of the temporary transfer in days, months, years;

indicating the calendar date from which the work begins and the calendar date on which the transfer ends, if any;

determine the event upon which the transfer period ends (return to work of a temporarily absent employee, etc.).

Upon the expiration of the temporary transfer period of an employee to another job, the employer must provide the employee with the previous job specified in the employment contract.

Permanent transfer of an employee to another job is allowed only with his consent.

Temporary transfer of an employee to another job is carried out with his consent, except for cases of production necessity or idleness in accordance with Article 145 of the Labor Code.

Before obtaining the employee's consent to transfer to another job, the employer must familiarize the employee with the content of the work to which he is being transferred, the working conditions in this job, as well as internal documents directly related to the performance of this work.

An employee shall not have the right to demand from the employer transfer to another job, except for the cases provided for in the first part of Articles 142, 143, the second part of Article 144, the first part of Articles 364, 394 and 395 of the Labor Code.

By agreement of the parties to the employment contract, an employee may be temporarily transferred to another job for a period of up to one year; in the case of such transfer to replace a temporarily absent employee who retains his or her job in accordance with the law, this may be done until the employee returns to work. If, upon the expiration of the transfer period, the employee has not been given his or her previous job, the employee has not requested it and continues to work, the condition of the agreement on the temporary nature of the transfer shall cease to be valid and the transfer shall be considered permanent.

An employee's request for temporary transfer to another job must be satisfied by the employer for the following valid reasons:

the presence of a medical opinion according to which the employee, due to his state of health, needs to be temporarily transferred to a job that is easier or excludes the effects of unfavorable production factors;

the presence of a medical opinion according to which a pregnant woman needs to be temporarily transferred to a job that is easier or excludes the effects of unfavorable production factors;

the inability of one of the parents (guardians) caring for a child under the age of two to perform their previous job;

in other cases where this request is made for good reasons and such work is available at the employer. The list of good reasons for temporary transfer to another job at the initiative of the employee, as well as the procedure for payment of wages during such a transfer, may be established by a collective agreement, or if such an agreement is not concluded, it shall be determined by the employer in agreement with the trade union committee.

In the event of a vacant position, the employer shall be obliged to transfer an employee who, in accordance with his state of health, requires a permanent transfer to a job that is lighter or excludes the effects of unfavorable production factors, and does not have contraindications due to his state of health, with his consent.

In the event that the employee refuses to be transferred to another job provided for in the first part of this article, as well as if the employer does not have another job that is not contraindicated due to the employee's health condition, the employment contract concluded with the employee may be terminated due to the employee's refusal to be transferred to another job that is not contraindicated due to the employee's health condition or due to the employer's lack of appropriate work, provided that the employee is paid the severance pay provided for in Article 173 of the Labor Code and provided with the guarantees provided for in Article 100.

If it is impossible to continue the work related to the labor function specified in the employment contract for objective reasons, the employer must offer the employee another job that corresponds to his specialty and qualifications, and in the absence of such a job, another job available at the employer. In the event of termination of an employment contract concluded with an employee on the grounds provided for in Part 2 of Article 143, Paragraphs 2 and 3 of Part 2 of Article 161, Paragraphs 2, 4, 5 and 9 of Part 1 of Article 168, Paragraph 1 of Part 1 of Article 489 of the Labor Code, the employer shall be liable for the obligation provided for in Part 1 of this Article.

In the event of termination of an employment contract concluded with an employee in accordance with Paragraph 4 or 5 of Part 1 of Article 168 of the Labor Code, the employee shall be transferred to another job, taking into account the requirements of Part 5 or 6 of Article 168 of this Code, respectively.

If an employee is not suitable for the job he/she is performing (the position he/she holds) due to insufficient qualifications, the employer is obliged to offer the employee a job that is suitable for the employee's specialty and requires slightly less qualifications, or if such a job is not available, another job available at the employer.

If, according to a medical report, an employee is contraindicated to perform the work stipulated in the employment contract, the employer must offer the employee another job that corresponds to the medical report. In this case, the employee must be offered a job in his or her existing specialty and qualifications, and if the employer does not have such a job, another job must be offered.

If the employer does not have a permanent job that can be transferred upon termination of the employment contract concluded with the employee on the grounds provided for in the second part of this article, but there is work that can be performed under a fixed-term employment contract, the employer must offer the employee a transfer to such a job. In this case, the employee is transferred to another job under a fixed-term employment contract.

Termination of an employment contract on the grounds listed in Part Two of this Article is allowed in the following cases:

when the employee refuses to transfer to another job offered by the employer, subject to compliance with the requirements stipulated in Parts One to Five of this Article;

when the employer has no vacancies or jobs that are not contraindicated due to the employee's health condition;

when the employee cannot be transferred to another job due to the fact that he does not meet the qualification requirements necessary for performing this job.

In connection with production necessity or idleness, it is allowed to temporarily transfer an employee to another job that is not stipulated in the employment contract without his consent, at the initiative of the employer. In this case, the employee may not be transferred to another job that is contraindicated due to his health condition. Temporary transfer of an employee to a job requiring lower qualifications due to redundancy is allowed with the written consent of the employee.

A production necessity is the need to perform unforeseen work that cannot be postponed in order to prevent or eliminate redundancy, to replace a temporarily absent employee, to prevent or eliminate the consequences of industrial accidents and industrial accidents, to perform emergency or emergency work or to prevent and (or) eliminate the consequences of disasters of a natural, man-made and ecological nature (fire, flood, earthquake, epidemic, epizootic, etc.), as well as in other cases that threaten the life or normal living conditions of the entire population or part of it.

A temporary suspension of work for economic, technological, organizational reasons, other production-related or natural reasons is a production necessity.

During the period of temporary transfer of an employee to another job due to production necessity or redundancy, the employee's remuneration for his work shall be made depending on the work performed, but not less than the previous average monthly salary.

The periods of transfer of an employee to another job due to production necessity or redundancy may not exceed a total of sixty calendar days within one calendar year.

The deadlines for transferring an employee to another job due to production necessity or redundancy, the specific amounts of remuneration, as well as special cases of production necessity shall be

established by the collective agreement, or, if it has not been concluded, by the employer in agreement with the trade union committee.

References

1. O‘zbekiston Respublikasining Konstitutsiyasi // Qonun hujjatlari ma’lumotlari milliy bazasi, 01.05.2023 - y.,.
2. O‘zbekiston Respublikasining Mehnat kodeksi // O‘zbekiston Respublikasi Oliy Majlisining Axborotnomasi, 1996-y., 1-songa ilova; Qonun hujjatlari ma’lumotlari milliy bazasi, 30.04.2023 - y.,.
3. O‘zbekiston Respublikasi Vazirlar Mahkamasining 2019- yil 18-yanvardagi 47-son qarori bilan tasdiqlangan Mehnatga haq to‘lashning yagona tarif setkasiga o‘zgartirish kiritish haqida”gi 47-sonli // Qonun hujjatlari ma’lumotlari milliy bazasi, 19.01.2019-y., 09/19/47/2508-son.
4. O‘zbekiston Respublikasining “Fuqarolarning davlat pensiya ta’minoti to‘g‘risida”gi Qonuni // O‘zbekiston Respublikasi Oliy Kengashining Axborotnomasi, 1993-y., 9-son, 2016-y., 49-son, 579-modda.