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*Unofficial translation*

## **LABOR CODE REPUBLIC OF TAJIKISTAN**

The Labor Code of Tajik Republic in accordance with the Constitution of Tajik Republic defines the basis of the policy of the state in the sphere of labor relations; adjust state guarantees of citizens' labor rights, and it is addressed to secure the legitimate interests of the employees, employer and the state.

### **CHAPTER 1**

#### **GENERAL DISPOSITION**

##### **Article 1. Relationships regulated by labor legislation**

Legislative and other normative labor acts regulate labor and connected with them individuals, working on the contracts base in enterprises and organizations of all forms of property, working for individuals, who are members or have a concern in a business.

##### **Article 2. Sources of labor's regulations and contemplation connected with them**

Sources of labor's regulations and contemplations connected with them are:

- a) Constitution of Republic of Tajikistan;
- b) Present Code;
- c) Legislations of Tajik Republic
- d) Legal acts of Majlisi Oli of Republic of Tajikistan , President of Republic of Tajikistan, Government of Tajikistan and local authority;
- e) Acts – agreements; general, branch-wise (tariff), territorial (regional, district, municipal) agreements;
- f) Collective agreement – and other local normative labor acts (internal labor regulations, schedule of holidays as well as orders, prescriptions, instructions, and so on decreed by the head of the enterprise within his/her cognizance).
- g) International – legal act, acknowledged by Tajik Republic.

##### **Article 3. Correlation of Legislative and Regulations of labor Relationship**

The minimum level for of labor's rights and guarantees for the workers is set by legislative and other normative-legal labor acts.

General, branch-wise (tariff), territorial (regional, district, municipal) agreements, labor agreements, collective agreements (contracts) can set labor rights and guarantees, not covered by legislative acts. The terms of agreements and

contracts, deteriorating the workers' state in compare to the legislative and other normative-legal labor acts of Tajik Republic, are not valid.

Terms of labor agreements and contracts, can not be changed unilaterally, if it is not legally provided. Issues which are not regulated by the legislative and other normative – juridical labor acts are resolved by the agreement of both sides about the labor, however, in case they do not come to an agreement – in order which is adjusted accordingly for resolving collective and individual conflicts.

#### **Article 4. Main labor rights and responsibilities of the worker**

In accordance with the Constitution of the Republic of Tajikistan everyone has a right to work, option of profession, occupational safety and health and right to social insurance from unemployment.

The State guarantees every worker's right to:

1. receiving free of charge career-guidance services, courses, trainings and professional development;
2. quantum merit and its timely receipt;
3. free of charge assistance in choosing applicable work and placement in accordance with avocation, ability and professional background;
4. working conditions, answering the requirements of security and hygiene;
5. Recreation, ensured by setting the maximum of working hours, weekly off days, yearly paid holidays, and half holidays (working days) for some of the professions and works.
6. participation in enterprise management;
7. Providing applicable work for the period not less than three months by the enterprise to the young specialists – graduator of the state academy.
8. compensation for material expenses in case of relocation (work and place of residence);
9. work related repayment for health or property;
10. Join trade council and other organizations, representing employees and labor collective's interests.
11. Strike;
12. Judicial protection of labor rights and qualified juridical assistance;
13. Social insurance benefit in case of temporary disablement and in other cases set by State;
14. protection from unemployment;

Employee is obliged to:

- 1) show fidelity to duties in correspondence with the service contract;
- 2) follow labor and technological discipline;
- 3) have careful treatment towards the employer property;

#### **Article 5. Basic rights and obligations of the employer**

Employer has a right to:

- 1) manage the enterprise and take decisions within the ambit of his/her authority;
- 2) make and cancel contract;
- 3) to define number of employees required for implementing the work;
- 4) to adopt local juridical acts within the ambit of his/her authority, obligatory for the enterprise's employees;
- 5) encourage employees for a high performance work;

- 6) require from the employees fulfilling internal regulations, other rules and standing orders, as well as contract clauses. In case of infringement (committing disciplinary case) bring the employee to the responsibility.
- 7) organize public unions in co-operation with other employers for assertion of the employer's professional interests as well and joining these unions;

Employer is obliged to:

- 1) follow the Constitution of the Tajik Republic, standing Labor Code, legislation and other normative – legal acts, labor agreements, provide standard working condition to the employees and following occupational safety and health regulations, industrial sanitations and fire – fighting protection;
- 2) while celebrating the contract introduce the employee with collective agreement and other local normative acts of the enterprise;
- 3) timely payment for the employees;
- 4) provide employees with equipments and materials, required for implementing the work.

#### **Article 6. Specialties of the labor legal regulations for separate category of workers**

Labor Code concerns every employee. The work of separate employees can have specialties according to forms of enterprise property where the employee works, in accordance with the conditions and nature of labor, labor relation with the employer, natural – climatic conditions and other objective factors, which are regulated by separate legislative and normative – legal acts of Tajik Republic. Hereby, the general level of the labor rights and guarantees provided by the standing Code can not decline.

#### **Article 7. Prohibition of discrimination in labor relations**

All citizens have equal opportunities in labor relations' field. Any kind of distinctions, exclusion or preference, rejection in job, made against dissimilarity, nationality, race, color, sex, age, religion, politics, and place of birth, of foreign or social growth leading to violating equality of chances in the sphere of work.

Individuals, thinking they have been incurred to discrimination in the sphere of labor relations can appeal with appropriate application to the court of law.

#### **Article 8. Prohibition of forced labor**

Forced labor is prohibited. The following are not considered forced labor:

1. work that is required on the basis of military legislation;
2. work that is required in emergency situations, constitute a menace to life, personal security or population health;
3. work that is required

#### **Article 9. Protection of employees' labor rights**

Protection of workers' labor rights is implemented by control authorities reviewing the labor legislation's observance as well as by the authorities reviewing labor conflicts and by the law.

#### **Article 10. Public Administration in the sphere of labor**

Labor and occupational organs of government of the Tajik Republic and its territorial apparatus implement public administration of the labor in Tajik Republic and are responsible for the preparation, carrying out, coordination of policy in this sphere, including labor and occupational conditions, labor relations, employees' capacity building and their migration.

#### **Article 11. International Treatments**

If by the international act, acknowledged by the Tajik Republic, more concessionary terms are set for the employees, in compare to legislative and other normative labor acts of Tajik Republic, then international legal acts are used.

#### **Article 12. Enforcement of labor legislation to the foreign nationals, stateless persons and to the foreign enterprises**

Foreign nationals and stateless persons, resident in Tajik Republic, can work as employees as well as employers at the enterprises, institutions and organizations or be involved in other activities under authorities and procedures, determined for the citizens of Tajik Republic, except for cases provided by the legislation of Tajik Republic.

Labor legislation of Tajik Republic concerns individuals, not citizens of Tajik Republic but working on the basis of contracts at the enterprises, situated on the territory of Tajik Republic, if other is not determined by the Law of Tajik Republic or by the international treatment with the participation of Tajik Republic.

The Labor legislation is used toward enterprises belonging wholly or partly to foreign individual or juridical person resident on the territory of Tajik Republic, with additions and deletions which can be defined by legislation and other normative – legal acts of Tajik Republic.

#### **Article 13. Terms calculus, provided by the standing Code**

Terms calculus, which is linked with the nascence, change or determination of labor legal relations by the standing code, starts from the next day after calendar day,

Terms, calculus by years, months, weeks, determine at a reasonable dates of the last year, month or weeks of the terms. In terms, calculus in calendar weeks and days, are included are in excluded days (holidays).

If the last day of the term falls on the excluded days, then the next working day is considered as the day of term determination.

#### **Article 14. Operation of labor legislation in time**

Legislative labor acts do not have retroactive force and are applied toward relations, occurred after implementation.

Operation of law concerns relation occurred until its implementation, only in cases, when it is directly provided by Law.

In case after negotiation of contract, a law is enacted which determines other acts than those functioning before during negotiating contract, the contract clause are valid, except cases when it is determined in the law that its operation concerns relations occurred before the concluded treatments.

## **Article 15. Main terms**

The main terms (expressions) used in the standing Labor code mean:

1. enterprise – enterprise, institution, organization, independent from kind of property and economic activity;
2. subdivision (unit) – manufactory, section, brigade, department, board, and other formations composed of enterprise;
3. employer – enterprise or individual concluding a contract with employees;
4. wage – worker – individual, concluding a contract with employer;
5. working conditions – collect of social, industrial factors of the labor. Wage rate, length of working day, holidays and other conditions are understood under the social factor, which are determined by laws and other normative – legal acts, as well as by the agreement of both sides. Technical, sanitary, hygienic, industrial and other conditions are understood under industrial factors, which are determined by laws and other normative – legal acts.
6. systematic disturbance of labor discipline – repeated disorder of labor discipline made by employee during the operation
7. breach of labor discipline – coming to work under the influence of alcohol, narcotic and toxic, absence from work with unreasonable excuse (including absence from work more than 3 hours of working day), committing at work voluntary waste or stealing the employer’s estates, disordering safety techniques, fire free safety techniques which brings great harm including trauma, crash and flash;
8. individuals who are members or participants of enterprise, co-owners, property owners having labor contracts with these enterprises;
9. quota – is a share (part) of job vacancies, which the enterprise offer, independent from form of property and management, to individuals requiring social security (welfare);
10. mail – providing job on account of available job vacancies for a specific category of employees;
11. young specialists – individuals, hired by the enterprise after graduating academy and university by the direction of the above academies;
12. essential working conditions – system and rate of wage, bonus, operating conditions, determination and cancellation of part time working day, changing job evaluation and denominate positions;
13. local normative acts – acts adopted by the employer in agreement with representative organ of employees, which force concerns concrete enterprise.

## **CHAPTER 2.**

### **LABOR COLLECTIVE EMPLOYEES INTEREST INTERMEDIATION**

## **Article 16. Labor collective**

Enterprise labor collective is composed of all its employees. The labor collective rights, the procedure and forms of there implementation is determined by law and other normative – legal acts, labor contract and the enterprise charter.

#### **Article 17. The workers' representation at the enterprises**

The employees' representatives at the enterprise are individuals elected by the working people of the enterprise according with the Tajik Republic laws.

The employees' interest intermediation in the labor relationship and their interests' protection can implement professional unions and their elected organs at the enterprises, other organs, elected by the employees.

The professional union's rights and their elective organs in relationship with public and economical organs, employers, determined by the law, by agreements and collective contracts.

The employers define the organ which they trust the representation and their interests protection.

All the representation organs of the enterprise's employees operate within their terms of references and exercise equal rights in protection of labors' interests. Cooperation between various representative organs of the enterprise's employees is encouraged.

The presence of various representative organs at the enterprise should not interfere to their activities of implementing their functions.

The employees and employers interests can not be represented by one representative employee's organ of the enterprise.

#### **Article 18. The rights of the representative organs at the enterprises**

The representative organs of enterprise employees are within their rights to:

1. Conduct negotiations, negotiate collective contracts and agreements, participate in preparation of other normative labor acts at the enterprise and bring in projects of the acts to the employer;
2. participate in reviewing issues concerning social-economic development of the enterprise;
3. implement control after labor legislation's compliance, and after the collective agreements and contracts;
4. protect labors' interests at the organs reviewing labor conflicts;
5. appeal at the court of law the employer's and persons entitled decisions, if they contravene the legislation and other normative-legal labor acts, or infringe the right of the employers by other ways;
6. go on strike in an order, set by the legislation;
7. accomplish other legal acts in implementing the representation.

All entitled representative organs of the employees have equal rights.

#### **Article 19. Prohibition of obstruction of legal activity of employees' representative organ of the enterprise**

Obstruction in any kind of forms of legal activity of the organ representative employees of the enterprise is prohibited.

The determination of representative organs of enterprise employees by the initiative of employer or entitled persons is prohibited.

Employer, entitled persons, accomplishing acts, indicated in part one and two of the standing article, are responsible in order set by the Tajik Republic legislation.

#### **Article 20. Employer's obligations**

Employer and entitled persons are obliged:

1. promote activity of representative organs of employees, respects their rights;
2. until making decisions, affected employees interests, to conduct consultation with their representatives' organ;
3. timely review proposals of representative employees organs and in a motivated way inform them about taken decisions;
4. give green light to the members of representative organs to visit the working place of the employees at the enterprise, whose interests they represent;
5. provide free of charge necessary information about issues concerning work and social – economic development;
6. provide required conditions for implementation of their functions by the employees representative organs;
7. provide space, means of transportation, communication means, and other means required for providing activity operation to the employees representative organs, which order of providing is determined by the collective agreement;
8. fulfill other obligations toward the employees representative organs, provided by the Tajik Republic legislations, collective contracts and agreements;

#### **Article 21. Additional working guarantees for members of employees representative organs**

Members of employees' representative organs are guaranteed from persecution of any kinds from the employer side in connection with the implemented representative activity.

Employees, excused from the industrial work in consequence of election to the representative organ, after determination of elective term of office, are provided with the previous work (position), and if its no more available another equivalent job should be offered and the present enterprise.

#### **Article 22. Representative organs of employers**

Employers have right to unit in an alliance, associations, congresses, and other social associations. Employers' public unions are established and act as public organizations, which objective is promotion of development, economic effectiveness and business initiative, as well as implementation of social partnership by introducing into the organs of state authority and public administration, into relationship with employees' representative organs, enterprises' and owners' interests, protection of their rights in the sphere of economical and labor relationships.

### **CHAPTER 3.**



## **COLLECTIVE CONTRACTS AND AGREEMENTS**

### **Article 23. Objective of making collective contracts and agreements**

Collective contracts and agreements are with a purpose of setting terms of work, employment and social guarantees in addition to legislative and other normative-legal acts.

The order of formulating, making and operation of collective contracts and agreements are set by the Law of Tajik Republic.

### **Article 24. Control after implementation of collective contracts and agreements**

Control after the realization of collective contracts, agreements is implemented by both sides and their representatives in an order, set the legislation.

After the implementation of the control sides are obliged to provide full and required information that they have.

Representative of both sides, signing the collective contract, yearly or in time, provided by the collective contract, report about the implementation of the work at the general meeting (conferences) of working collective.

### **Article 25. Obligations for non compliance of legislation on collective contracts and agreements**

Obligation for avoidance from participating in negotiations and for infraction and non compliance of collective contracts and agreements is determined by the Law of Tajik Republic.

## **CHARPTEP 4.**

### **LABOR CONTRACT**

#### **Article 26. The meaning of contract**

Labor contracts – contracts between employer and employee, according which the employee is obliged to full fill the work determined by one or several profession, specialties or positions with appropriate qualifications, with subordination to internal regulation and the employer is obliged to pay to the employer for the work and provide working conditions, provided by the legislative and other normative-legal labor acts and agreement of both sides.

#### **Article 27. Contracting parties**

An employee, as a contracting party can be citizen, who achieved 15 years old. P, who achieved 14 years old, can make labor contracts in cases and orders, provided with the standing Code (article 174, section 2).

Employer, as a contracting party can be:

1. an appropriate organ of public administration, enterprise, registered as a juridical person in an order set by the law, as well as its representatives and branches;
2. individual, registered in an order set by the law, as individual entrepreneur or person using the labor of other persons for the needs of personal consumer economy.

### **Article 28. The freedom of labor contract**

Parties during negotiating the contract (agreement) are free and have equal rights. Forcing in making the labor contract is not allowed, except for cases when the obligation to make contracts is provided by the standing Code, other legislations and responsibilities accepted by the employers on a voluntary basis.

Unreasonable denial from making contract with an employee, appointed for public service on account of quota, mail, as well as in other cases, indicated in the standing Code and other legislations.

Employee who was invited to work in result of transferring from another organization, in coordination between the employers of the enterprise, the employee can not be rejected in making contract.

After demand of the employee or the interested organ, the employer is obliged in cases, provided by the Code, inform them about the motives of the rejection in a written form.

Employee has a right to make a labor contract with some employers on a condition of off – hour jobs, if it is not prohibited by the Law.

Additional terms of work (interviews, or taking an office) can take precedence of making labor contract in cases provided by Law.

### **Article 29. Guarantees on accepting to work**

Illegal rejection in accepting to work is prohibited. Illegal mean rejection in accepting to work, infracting requirements of the section 1, article 7 of the standing Code, as well as:

- individuals, invited to work by the employer;
- individuals, with whom the employer is obliged to make a contract according to Law – (invalids, and individuals younger then 18 years old, appointed for a work in on account of determined quotas, pregnant women, and women having children under 3 years old, according their pregnancy and the availability of children) in other cases provided by the law.

In case of rejection for accepting to work by requirements of the employee, the employer is obliged to give the reasons for that in written form, in three days period, signed by office – bearer, who has rights to accept, this rejection can be appealed at the court.

### **Article 30. Contents of the labor contract**

The contents of the labor contracts are specified by the agreement of the parties, as well as the legislation and other normative-legal labor acts, including general, branch – wise agreements and collective contract.

The text of the labor contract should indicate place of work (enterprise or specific department), the function of the employer, starting day, and duration of the contract, the salary size, working hours, length of holidays, and other working conditions.

The level of labor rights and guarantees for the employees, set by the legislative and other normative – legal acts, can not be reduced while making a contract.

### **Article 31. Duration of the labor contract**

Labor contracts can be made:

- 1) for an uncertain term;
- 2) for a certain term (no more than five years);
- 3) for fulfillment of responsibilities of the absent employee, whose work is kept according to the standing Code;
- 4) for implementing specific work;
- 5) for implementing seasonal work.

The labor contracts for implementing seasonal work are made in cases, when the work can be done only during specific period of time (season) not surpassing six months, due to natural – climatic conditions.

If the duration of the contract is not indicated in the contract, then the contract is considered as made for an unspecified time and can not be re – made for a specified time without employee’s agreement.

Terminal contracts are made in cases, when the contract for a specified time can not be made according to the type of work and its implementation conditions, or the employee’s interest, as well as in cases, provided by the Law.

### **Article 32. Celebration of contract**

Labor agreement, can be made as in written form, as in verbal form, however, contracts in written form only. Labor contract made in written form is drawn in 2 copies, and signed by both sides. One copy is given to the employee another will be kept by the employer.

While proceeding to work the following papers are provided:

- 1) employment history (except cases when the employer is proceeding to work at the first time);
- 2) passport (birth certificate for individuals younger 16 years old);
- 3) educational background documents, in cases provided by the normative acts;
- 4) for people bound to military service – document about military service, and certificate.

Employer has no right to require from the hired employer, if is not provided by law.

Appointment is set by the order (prescription) of the employer or the entitled person. Order (prescription) is declared to the employee against receipt.

The effect of the labor contract starts from the factual day of the work, if it is not specified in the contract.

If the employee starts his/her work in absence of the written labor contract with the privity of the employer, than the contract is considered made from the first working day and should be set during the three days from the day when the work starts.

### **Article 33. Acceptance test**

The contract can be made with the probational time. The probation is set by the agreement of the parties and can not surpass three months, except cases set by the Law. During the probational time the legislative and other normative – legal labor acts concerns the employee as well.

The probation is not set during acceptance to work individuals, not reached 18 years old, young specialists, during out placing to another location at another work, enterprise, as well as on acceptance to work on a basis of competition.

### **Article 34. Discipular contracts**

The employer has a right to make a contract with individuals, seeking job, discipular contracts for a professional training for a term, determined in this contract. Discipular contract is made on purpose of procurement of primary profession of businessman.

After the termination of the contract with the individuals finishing their training (practice), a labor contract can be made.

The salary during the training (practice) is set by the contract.

The order of making discipular contracts is determined by the Government of Tajik Republic.

### **Article 35. Out placing to another permanent work**

Out placing to another permanent work (changing the working functions of the employee) – instructing with another job, qualification, position, is possible only with the agreement of the employee.

By the out placing, requiring the agreement of the employee is also considered to instruct him with a work, during the implementation of which the terms of work significantly change, conditioned in the contracts by both sides, unrelated with conditional industrial, organizational, technological and economic reasons.

The agreement of the employee to get out placed to another job at the same enterprise, as well as to another enterprise or another location even if with the enterprise should be taken in written form.

Out placing is not considered and does not require the agreement of the employee when he/she is transferred at the same enterprise from one department to another, getting instruction at another mechanism or aggregate, within the framework of specialization, qualification or position conditional with labor contract, in case the working conditions will not change significantly. The employer does not have right to move the employee to a work (place) contraindicated to his/her health.

If the extension of working function set by the contract is not possible due to objective reasons, provided by the law, the employer is obliged to offer the employee another job on hand. In case the employee will reject the offer, the contract can be terminate on general lines.

### **Article 36. Alteration of contract**

The employer has a right to change the terms of the work, if those changes are predetermined in the technology and organization of the production labor.

By the collective contracts preliminary consultations can be provided about alteration of contract for specific group of employees with organs, represented the interests of the employees at the enterprise.

The employer is obliged to inform the employee about the forthcoming changes of terms of work no later than 2 months ahead. If the employee will not agree to continue work on the new term of work, then the contract can be terminated with a severance pay in a 2 months wage rate. The employee has a right to appeal in court the alteration of contract. During the examination of the dispute the evidential burden of impossibility of keeping previous term of work will lie on employer.

In case if changes in the organization of production and labor, changes of the volume of work can cause mass quitting of employees, employer with intent of keeping workplaces is within his/her rights with agreement with appropriate employers' representative organ of enterprise change the employees terms of work without complying term date of warning, provided by the third chapter of the current article.

#### **Article 37. Temporary out placing to another work in case of demurrage**

In case of demurrage the employees transfers with account of their occupation and qualification to another job at the same enterprise for the whole time of demurrage with their agreements to another enterprise, but in the same location for one month period, if other term is not set by the collective contract.

During the out placing to a low paid job in consequence of the demurrage, the salary of the employee is made in a size of not less than his/her monthly average salary.

#### **Article 38. Temporary lay off**

In case if the enterprise face difficulties of industrial, technological or organizational types, the employer with agreement with appropriate employees' representative organs of the enterprise can lay off the work of separate departments (shops, section, brigade) without taking measures on redundancy of staff.

Temporary lay off is considered as a demurrage through no fault of the employees and at impossibility of out placing the employee to another work he/she is paid in a size of tariff rate.

Temporary lay off without paying demurrage is prohibited, if the employer does not have opportunity for out placing the employee to another work.

#### **Article 39. Limitations upon transfer to unskilled labor**

During the demurrage and in case of temporary replacing of the absent employee the transfer of qualified employees to unskilled labor without their agreement is excluded.

#### **Article 40. Temporary transfer to another work due to industrial necessity**

Temporary transfer to another work without employee's agreement is admitted for a period of one month due to industrial necessity or demurrage. On this the employee can not be transferred to another work, contraindicated to his/her health. During the period of the temporary out placing the employee is paid according to the work he/she is fulfilling, but not less than the previous average salary.

In case of industrial necessity the deadline of the out placing, and concrete wage rate are set in the collective contract, however, if the contract is not made – the above are determined by the employer after consulting with the employees' representative organs.

#### **Article 41. Temporary transfer to another work on the initiative of the worker**

The request of the worker about getting transferred to another work is liable to the employer consideration if this request is called by reasonable excuse and there is a vacancy at the enterprise.

The list of reasonable excuses for temporary transfer, as well as the order of the payment during the out placing is set by the standing Code, collective contracts, and if the contract is not made – those are determined by the employer after consulting with the employees' representative organs and the agreements of the sides.

#### **Article 42. Obligations of the employer on prevention of mass dismissals of employees**

At the menace of mass dismissals the employer is obliged should take special measures with agreement of the employees' representative organs and appropriate labor and occupational agencies, providing:

- 1) limitations or temporary termination of hiring new employees, and dismissal by worker;
- 2) limitations in applications of overtime work;
- 3) the alteration of contract according with the part four, article 36 of the standing Code;
- 4) temporary lay off according to article 38 of the standing Code;
- 5) gradual release of the employees;
- 6) other measurements, if they are provided by the collective contract.

#### **Article 43. Labor relations at the change of the owner and reorganization of the enterprise**

At the change of the enterprise owner, equally at its reorganization (amalgamation of business, affiliation, sharing, and reorganization) the labor relations with the employee's agreement continue. Termination in this contracts by the initiatives of the employer are possible on the bases provided by the standing Code, and with the required observance of the established guarantees.

The new owner during six months from the day of acquiring the rights of an owner has a right to remade or cancel contracts, made by the owner with the head of the enterprise and employees, implementing general administrative functions at the enterprise.

#### **Article 44. Termination of the contract**

Labor contract can be terminated:

- 1) with the agreement of both sides. On the ground of this any contract can be terminated at any time;
- 2) on the initiative of the employee;
- 3) on the initiative of the employer;
- 4) contract expiring date;
- 5) circumstances beyond the control of both sides.

#### **Article 45. Termination of a contract on the initiative of the employee**

The employee has a right to terminate contract made for an uncertain time, and inform the employer on a written form two weeks ahead.

After the termination of the notice the employee has a right to terminate his work, and the employer is obliged to give the employment history to the employee and make payment to the employee.

By the request and agreement of the employer the contract can be terminated until the termination of the notice. In case if the application of the employee about the denunciation is conditioned by inability of continuing his/her work, the employee has to terminate the contract in a day, which is requested by the employee.

During the term of the notice the employee has a right to withdraw his/her application about the denunciation of the contract, if another employee has not been appointed at his place.

Terminable contract is liable for termination by the require of the employee in case of his/her illness or disability precluding to the implementation of the work according the contract, infraction by the employer other legislative and other normative – legal labor acts or the contract, as well as by other reasonable excuses.

The employer has a right to terminate the contract without preliminary information of the employer, in cases if the employer during making contract provided inadequate information about the work conditions or break an engagement of providing healthy and safe working conditions.

#### **Article 46. Termination of the contract on initiative of employer**

Termination of contract on the employer's initiative should be liable. The cause for this is:

1. closing down of an enterprise; termination of the owner's activity; redundancy of the staff;
2. when the employer finds the employee's discharge for inaptitude as a result of having inadequate qualification, or health conditions which impede for continuing given work;
3. systematic non-compliance of duties without reasonable excuses by the employee, entrusted to him/her by the contract other internal regulations, if summary punishment earlier were used toward this employee;
4. non-attendance (including being absent at work more than three hours during the working times) without reasonable excuses;
5. non-attendance to work for more than three months as a result of temporary disability, not considering maternity leave, if longer term for keeping the position is not set by the legislation for a specific illness. The place of work reserves after the employee who lost working ability as a

result of labor injuries and illnesses, after recovering earning capacity or establishing the disability.

6. attending work in a drunk, narcotic and toxic state;
7. committing stealage of the employer's property, set consummated decreed by the court or legal resolution, to whose compensation imposed administrative penalty.
8. termination of contract with by-worker due to hiring another employee, who is not by-worker, and as a result of limitations off hour work;
9. termination of contract with an employer of the enterprise due to the change of owner;
10. gross violation of labor legislation by the enterprise employer (special subdivisions) and their deputies;
11. guilty conduct by employee directly serving monetary and tradable values, acts afford ground for shattering the employer's confidence to him/her;
12. commitment of immoral action by employee, fulfilling educational function, incompatible with continuation of the given work;
13. infringement of orders and rules established by the legislation during acceptance to work;

By Laws, regulations and dispositions about discipline can be provided and other additional reasons for terminating the contract by the initiative of the employer.

The termination of the contract by the reasons determined in point 1 (except for cases of closing down the enterprise), in point 2 of the current article, in point 2 article 53 of the standing Code is admitted, if it is not possible to transfer the employee with his/her agreement to another work.

It is not admitted to terminate the contract on initiative of employer for a period of temporary disability (except for quitting job according to the point 5 of the current article) and for a period of the holidays, except for cases of closing down the enterprise, termination of the entrepreneur's activity.

#### **Article 47. Prerogative right for keeping at work during the termination of contract in changing the number of the staff (workers) or the alteration of working conditions**

At the termination of contract due to changes in technology, industrial and labor organization, reduction of work, causing the number of the employees, or character of the work, the prerogative right for keeping at work is given to employees with a higher qualification and working efficiency.

At equal qualifications and working efficiency preference is given to:

- employees having more than two dependants;
- individuals, whose families do not have other employees with independent income;
- employees, having long term record of service at the given enterprise;
- employees, advancing their qualification on appropriate specialization in secondary and higher special academies, without leaving work place, graduated high and secondary special institutions, professional – technical academies with breaks, during two years after graduating the study in conditions of working by specialisation;
- individuals, who got injures during work or an illness at the given enterprise;



- invalids of the Great Patriotic War, participants of the Great Patriotic War and others liken to them;
- individuals who got radiation and other illnesses, linked with emanation, as a result of breakdown in atomic industrial project, invalids, whose illness is linked with the breakdown in industrial projects, participants of the liquidation of the breakdown consequences and catastrophe, and to individuals evacuated or moved from the designated zones, and to other individuals liken to these people;
- inventors.

Other circumstances can be covered by the collective contracts, in which occurrence preference is given for keeping employees at work.

**Article 48. Agreement on termination of contract on initiative of employer with the trade committee or other employees' representative organs**

The termination of the contract on the initiative of the employer (article 49 of the standing Code) is made after the preliminary information of the appropriate union or other employees' representative organs, not later than two weeks ahead.

In cases covered by the collective contracts, agreements, the termination of the contract is done only with the primary agreement of the appropriate union or other employee's representative organs.

The trade union, or another employees' representative organ has to inform the employer in a written form about the taken decision on the issue of agreement on terminating the contract in a period of ten days from the day of receiving the introduction of an office – bearer who has a right to terminate the contract in a written form.

The employer has to terminate the contract not later than one month from the day of receiving the agreement of the trade union, or other employees' representative organ.

**Article 49. Warning about the termination of the contract**

The employer has to warn the employee in a written form about his/her intention of terminating the contract, made for an unspecified period, for the following terms:

- 1) at the terminating of the contract due to the closing down of enterprise, rundown and redundancy of the staff not less than two months ahead;
- 2) at the terminating of the contract due to inadequacy of the employee to the given work, as a result of inadequate qualification or state of health – not less than two months ahead;

During the giving advance notice the employer is granted a right not to attend work, for not less than one day in a week with payment, while searching another job.

Under agreement of both sides on the determined causes the contract can be terminated until terminating of the term notice with the salary size not less than the average day work payment, left till the termination of the deadline.

The employer is obliged to inform the appropriate agencies dealing with population occupation information about the forthcoming dismissal of employees, with indicating their specialization, qualification and wage rate.

**Article 50. Guarantees and bonuses for released employees**

Employees, who were released from the enterprise due to the redundancy or changes of the working conditions, are guaranteed;

- 1) service benefit of a wage rate not less than one month;
- 2) keeping of the average monthly salary for a period of searching for another work during the second, third months of the dismissals; according to the decision of the of the agencies dealing with the population occupation, if the employee beforehand in ten days period after dismissal applied to that agency and was not outplaced;
- 3) right for a pre-term retirement for a year ahead until the determined by the legislation term for individuals of retirement age, having working experience, which give a right to retire at the retirement age.

Individuals, who lost ability to work during breakdown or have illnesses, are equal to the released employees.

By the legislative and other normative – legal acts can provide other longer terms for keeping average salary after the employees for a period when they search for a job.

#### **Article 51. Terminating of terminal contract**

The terminal contract is terminated after termination. If after termination of the contract the relationships continue and neither of the sides has required its termination, the contract is remade for a new term, or at the absence of that agreement is considered for an unspecified term.

Contract made in the absence of employee, whose working place is reserved after him/her, terminates from the day when the employee returns to work.

Labor contract made for a period of implementing specific job, terminates after its finished.

#### **Article 52. Termination of terminal contract before the terminating of the date**

Terminal contract, covered by the point 2 and 4 of article 31 of the standing code, can be terminated before finishing the term, on the causes, provided by the articles 43 and 44 of the standing code. In these cases the penalty repayment can be covered by the labor contract.

The employer is disobliged from repaying penalty, if the contract is terminated in advance on the initiative of the employee or due to the disorder of the regulations by the employee.

#### **Article 53. Termination of contract on circumstances not depending on the parities' will**

Contract is liable to termination due to the following circumstances, which do not depend on the parties' will;

- 1) during induction or having military service;
- 2) recruit the employee who implemented the given work before;
- 3) effectiveness of the verdict validity of law, according to which the employee is convicted to punishment, which exclude continuing the previous job;
- 4) due to the death of the employee;
- 5) at disordering working regulation rules;

6) at other cases, covered by law.

#### **Article 54. Removal from office**

On the requirement of entitled state authorities, in cases provided by the legislation of the republic, the employee is obliged to remove the employer from the office.

The employer does not have a right to let the employee, attending work in a drunken, narcotic, or toxic state, at work at this day.

For a period of removal the salary is not paid.

#### **Article 55. Severance pay**

The employee has severance pay at the termination of the labor contract:

- on the initiative of the employer, except cases of terminating the contract on the causes, covered by points 3,4,6,7,10,11 and part 1 article 46 of the standing Code;
- at circumstances, not depending from the parties' will, except for cases of terminating the contract at verdict validity of law (point 3 article 53 of the standing code) and at the death of the employee (point 4 article 53 of the standing code).

The severance pay size is determined by multiplying one quarter average salary to the number of the entire work (years) of the employee at the enterprise, and can not be less than the monthly average salary of the employee.

#### **Article 56. Employment history**

The employment history of the defined sample is a main document of the working activity, confirming the working experience of the employee. The order of controlling the employment history is determined by the Government of the Tajik Republic.

The employer is obliged to pursuit the employment history for all employees, who have worked at the enterprise for more than 5 years.

The employment history has the following information – about accepting to work, transfer to another permanent work with indicating the profession (specialization), qualification, position (according to the normative acts, determining the list of professions and positions of the employees) and dismissals of the employees with defining the causes for terminating the contract, as well as promotions and rewards for successes at work.

At dismissals the employment history is handed out to the employee at the last working day. At the delay of handing out of the employment history on the employer's fault the employee is paid the average salary for each day of the delay.

#### **Article 57. The obligation of the employer to give a certificate to the employee on working at the given enterprise**

The employer is obliged to give to the employee, also to the former employee, on his/her request a certificate about working at the given enterprise with indicating specialization, qualifications, positions, working hours and the wage rate.

### **Article 58. Exclusion the illegal dismissal and transfer of the employee to another work**

The employee, illegal out placed or dismissed from work, is re-required to work by the employer or law court.

At reviewing the dispute in court the employer is assigned an obligation to prove the necessity and reasonableness of out placing or dismissal.

If the collective contract covers receiving of the preliminary agreement of appropriate union or other employees' representative organs during the dismissal of employees on the initiative of the employer, then the court including other evidences consider the agreement of the given organs.

### **Article 59. Employer's obligation for illegal out placing and termination of the labor contract**

At the re-recruiting the employee to work, the obligation is obliged the responsibility to reimburse the loss to the employee.

The reimbursement consists:

1) in compulsory backpay for the time of bound non-attendance in rate no less than forfeited salary;

2) in compensation of additional expenditures, linked with appealing the transfer or dismissal (specialists consultations, and expenses during pursuing the claim);

3) in possible compensation of moral injury. The size of the compensation for moral injury is defined by the law court on account of the employer's act's evaluation, but can not be less than the average salary of the employee.

## **CHAPTER 5.**

### **WORKING HOURS**

#### **Article 60. Concept of working hours**

Hours are considered working, during which the employee has to fulfill his/her obligations in accordance with the internal regulation, or by the terms set in the labor contract.

The regular working hours at the enterprises can not surpass 40 hours in a week.

#### **Article 61. The reduced length of working hours**

Reduced working hours without decreasing the salary is determined for the separate group of people on account of their age, health state, working conditions, peculiarities of working functions and other circumstances in accordance with the legislative and other normative – legal labor acts, as well as terms of the contract.

The reduce length of the working hours is determined:

- 1) for employees, who have not reached 18 years old (article 178 of the standing Code);
- 2) invalids (article 152 of the standing Code);
- 3) employees who are occupied with jobs with unfavorable working conditions (article 62 of the standing Code), or jobs that have special features (article 63 of the standing Code).

**Article 62. The reduced duration of working hours for employees, occupied with works with unhealthy working conditions**

The reduced working hours not more than 35 hours in a week is determined for employees, who, during the process of work fall under harmful physical, chemical, biological and other industrial factors. The list of manufacture, workshops, professions and positions, work that should have reduced working hours at their implementation, is affirmed by the Government of Tajik Republic.

**Article 63. The reduced duration of working hours for employees having job with specific features**

For specific group of employees (doctors, teachers and others) whose work is linked with high emotional, moral, tense anxiety (have special features), the length of working hours is determined not more than 35 hours in a week.

The list of these employees and concrete length of the working hours is determined by the legislative and other normative- legal labor acts of Tajik Republic.

**Article 64. Short working hours**

According to the agreement between the employer and the employee short working hours or half working week can be determined as during accepting to work as well as afterwards, with payment depending from output or

Employer is obliged to determine the short working hours in cases, covered by the standing Code, as well as by other legislative and normative-legal labor acts.

At introduction of the regulations of the short working hours, the length of the working hours can not be less than half of the monthly norm of the working hours, and the salary – lower of the minimal rate determined by the Law.

The work at the conditions of the short working hours does not have any limitations for the employee, in length of the yearly leaves, calculus of the working experiments and other working rights.

**Article 65. Types of work weeks. The regulation of working hours.**

Kinds of work weeks (five days work week with two weekends or six days work week with one weekend, work week with sliding weekends) and regulation of working hours (length of everyday work, time of starting and finishing of work, times off, number of shifts in a day, sequence of working and non working days, order of transferring employees from one shift to another) is determined at the enterprises by the internal regulations, other local normative acts, and if those are not available – by the agreements of the employer and employee.

**Article 66. Shift work**

At the shift work the duration of the daily work (shift) is defined by the time schedule of the shift, which are determined by the employer after preliminary consultations with appropriate employees' representative organs, and are notified to the employees not later than, one month before bringing them into effect.

The employees change at each shift equally. Transfer from one shift to another is determined by the time schedules.

Involving employer to a work during two shifts is prohibited.

#### **Article 67. Duration of the working hours**

The duration of working hours (shifts) can not surpass:

- at five days work week the duration of daily work (shift) is defined by the internal regulations or time schedule, confirmed by the employer after preliminary consultations with appropriate employees' representative organs, on account of work peculiarities and with following of the work week duration;
- for employees at an age of 15 to 16 – 5 hours, from 16 to 18 years old – 7 hours;
- for students of general school education, educational institutions with primary and secondary professional education, who study and work at the same time, being at the age of 14 to 16 – 2.5 hours, 16 to 18 – 3.5 hours;
- for invalids – 6 hours.

During the six work week the duration of daily work can not surpass 7 hours at the weekly norm of 40 hours, 6 hours at one weekly norm of 35 hours and 4 hours – at the weekly norm of 24 hours.

#### **Article 68. Sharing the working day in parts**

At the places, where it is necessary due to the special feature of the labor, the working day can be shared with the agreement of the employee, so that the general duration of the working hours would not surpass the determined duration of the daily work.

Types of work, where the working days are divided into several parts, number and duration of time offs during work, as well as types and rates of compensation for the employees for the work with these terms are defined collective agreements and contracts, but if its not made – the employer after preliminary consultation – with appropriate employees' representative organs.

#### **Article 69. Duration of work the day before legal holidays**

Duration of daily work (shifts) during the day before holidays (excluded days) (article 83 of the standing code) is reduced for all employees, not less than for one hour.

The reduction of the duration of daily work (shift) before holiday is not done in cases, when weekend precede the holiday, and also when reduced work weeks are defined to the employees.

At continuous productions and separate types of work, where according to the terms of the production (work) reduction of the daily work duration before the

holidays is not possible, the elaboration of the working hours norm is compensated by providing additional time for holiday, in order, determined by the employer after preliminary consultation with the appropriate employees' representative organs or with the agreement of the employee repaid overtime premium.

#### **Article 70. Duration of work at night time**

A work is considered night time from 22 hours to 6 o'clock in the morning. The duration of work at night time is reduced by one hour in accordance of the reduction of the duration of the work week, if less than half of the determined duration of the daily work (shift) for the employee falls at night time.

At continuous acting productions and at the separate types of works, where due to the production conditions is not possible to reduce the duration of the daily work at the night time, the elaboration is compensated by providing additional time for holiday, in order determined by the employer after preliminary consultation with the appropriate employees' representative organs. Involving employees to work at night time is made with following the limitations, provided by the articles 152, 161, 181 of the standing code.

#### **Article 71. Summarized count of the working hours**

At the enterprises where according to the production conditions can not be followed weekly duration of the working hours, can initiating summarized count of the working hours at conditions, that the duration of the working hours would not surpass the normal working hours (article 67-70 of the standing Code). Hence, the discount period should not be more than 1 year, and the duration of the daily work (shift) more than 12 hours. The order of using summarized count of the working hours is set by the collective contract, and if the contract is not made – by the employer after consultation with the appropriate employees' representative organs.

#### **Article 72. Overtime work**

Overtime is considered work, implemented by the employee by the instruction of the employer over set for the employer daily duration of the working hours, or over normal number of working hours for the discount period.

Overtime works are used in exceptional cases, covered by the article 73 of the standing code, with the agreement of the employee, on causes and orders set by the employer by the agreement of the appropriate employees' representative organs. The employer is obliged to provide at work during the overtime work safety regulations and normal industrial and social – welfare conditions.

Involving employees to overtime work, is done with the following limitations set by articles 152, 162, 181 of the standing Code.

At the duration of the working shift – 12 hours and also at works with extra heavy and unhealthy working conditions, the overtime work is not allowed.

Overtime works should not surpass at for the period of two days at a run:

- two hours – at works with unhealthy and heavy working conditions;
- four hours – at another works.

For each employee the overtime work should not surpass 120 hours per year.

#### **Article 73. Exceptional cases of using overtime work.**

The usages of exceptional cases of overtime work are:

- a) process of works, necessary for defencing the country, preventing and liquidation of natural disasters and dangers;
- b) process of works, on liquidation of accidental and unexpected circumstances, breaking normal functioning of the production;
- c) necessity to finish commenced work, which as a result of unanticipated and causal delay on technical conditions of the production can not be finished during the normal continuance of the working hours, if during this the termination of the commenced work can cause waste of the materials, or the equipment;
- d) process of temporary works on repairing and recovering mechanisms or structures, if their defects generate terminating of works for a significant number of employees;
- e) continuation of work in continuous productions, at none attendance of the replaced employee during which the employer is obliged to take immediate action on replacing the shiftman with other employee;
- f) implementation of loading and discharging works and other work linked with them on transportation if needed, during releasing the storehouses of the enterprise transport, as well as transport means for loading and discharging for a purpose of prevention of gathering loads in departure and appointment points, and demurrage of transport means.

#### **Article 74. Discount of working hours**

The employer is obliged to timely implement accurate discount of working hours, actual worked out days by each employee, as well as the overtime work.

## **CHAPTER 6.**

### **TIME FOR REST**

#### **Article 75. Concept of time for rest and its types**

Time for rest is a time, during which the employer according to law can be released from implementing working obligations and which he/she can use according at discretion of the employee for satisfaction his/her interests and recovering earning capacity.

The following refer to types of time for rest:

- a) time offs during the working days;
- b) international holidays in work;
- c) weekends (weekly time offs);
- d) yearly paid labor leaves;
- e) education leaves;
- f) social leaves.

#### **Article 76. Time off for rest and catering**



During daily works (shift) the employee must be provided by a time off for rest and catering. A concrete duration of this time off is set in internal regulations, time schedules, or the agreement between the employer and employee. As a rule, the employee should be provided by time off not later than one hour after commencing work.

These times off are not included in the working hours and are not paid and its duration can not be more than 2 hours.

At works where according to the terms of production providing times off for rest and food is not possible, the employer is obliged to provide the employees an opportunity for having rest and food during the working hours. The list of these works are set in collective contracts (if collective contract is not made, they are determined by the employer after preliminary consultations with appropriate employees' representative organs) and place for the rest and having food is also defined by the employer.

#### **Article 77. Times off during the shifts. Special times off for heating and rest**

At the separate types of work times off are provided to the employees during the shifts given by the technology and the organization of the production and work. Types of these works, duration and order of providing these times off are confirmed in the collective contracts (if collective contract is not made – they are defined by the employer with agreement with appropriate employees' representative organs).

Employees, working outside during cold or hot seasons or in closed unheated places, loaders, occupied with loading and discharging works, as well as other group of employees, in cases and orders covered by legislative and other normative acts, labor agreements, are provided by special times off like - heating, cooling, clothes drying, industrial gymnastics, and breastfeeding of a baby (article 167 of the standing Code).

These times off are included in the working hours and are paid. The employer is obliged provide equipment for spaces (rooms) for heating, cooling and rest of the employees.

#### **Article 78. Duration of daily rest**

Employees have to be provided by times off between shifts, with duration of not less than 12 hours.

#### **Article 79. Weekends**

All employees are provided weekends (weekly continuous rest). At five days work week the employees are provided by two days off in a week, at six days work week - one day. The general weekend (rest day) is considered Sunday.

Second day off at five days work week is set by the time schedule of the enterprise. Both days off (weekends) as a rule are provided at one time.

#### **Article 80. Weekends for continuous working enterprises and the one, where the work can stop in a general day off (weekend)**

At enterprises, where lay off is not possible due to industrial – technical conditions, or as a result of necessity of continuous serving the population, as well as

other enterprises with continuous production, weekends are provided in different days of the week alternately to each group of employees according to the time schedule of the shifts, set by the employer, after the preliminary consultation with appropriate employees' representative organs.

At enterprises, where the work can not be stopped in general day off (weekend) due to the necessity of serving the population (theatres, museums, organizations of public service), the day offs (weekends) are determined on agreement with local executive authority (hukumat).

### **Article 81. Prohibition of works at weekends. Exceptional cases involving employees to work at weekends**

Work at weekends is prohibited.

Involving employees to the work at weekends is allowed by agreement with appropriate employees' representative organs in the following exceptional cases:

- for preventing or liquidation of natural disasters, industrial breakdown, or immediate liquidation of the consequences;
- for preventing infrequent occurrence, destruction or waste of the property;
- for implementing unadjourned, unpredictable works, from urgent implementation of which depends in the future the normal work of the enterprise at whole and its individual sections;
- in other cases, covered by the laws and other normative – legal acts.

Involving employees to work in their days off is done in a written form, by the direction of the employer with following the limitations, set in (article 152, 162, 181 of the standing Code).

### **Article 82. Compensation for the work at weekends**

Work during the weekends is compensated by the request of the employee for being provided by another day off or by being paid in a rate, covered by the article 105 of the standing Code.

### **Article 83. Holidays**

Enterprises are not working during the following holidays:

- 1) 1<sup>st</sup> of January – New Year;
- 2) 8<sup>th</sup> of March – International Women's Day;
- 3) 21<sup>st</sup> – 22<sup>nd</sup> of March – Nawruz;
- 4) 1<sup>st</sup> of May – May Day, day of solidarity of laborious;
- 5) 9<sup>th</sup> of May – Victory Day (Great Patriotic War);
- 6) 27<sup>th</sup> of June – Day of National Unity;
- 7) 9<sup>th</sup> of September – Independence Day of Tajik Republic;
- 8) 6<sup>th</sup> of November – Constitution Day of Tajik Republic;
- 9) Ramadan – yearly, in one day of contemporaneity;
- 10) Qurbon – yearly, in one day of contemporaneity;

During the holidays works are allowed, which delay is not possible due to industrial – technical conditions (enterprises continuously working), works generated by necessity of serving the population, as well as urgent maintenance, loading and discharging works.

The work at holidays is compensated by reimbursement, determined in article 105 of the standing Code.

At coincidence of the weekend and the holiday, the weekend will be moved to the next day after the holiday.

Celebrate without days off the following holidays:

- a) 22<sup>nd</sup> of July – Day of Tajik language;
- b) Mehrgon;
- c) Sada.

#### **Article 84. Yearly working leaves**

All employees are provided by yearly working paid leaves for resting and recovering earning capacity with keeping the working place.

Substituting leave by compensation is not allowed, except cases of dismissing the employee, who has not used the leave.

#### **Article 85. Duration of yearly main leave**

Yearly main leave is provided to employees with duration not less than 24 calendar days. Extended yearly main leaves can be provided to separate group of individuals, on account of their age, working experience, health state, peculiarities and features of their working functions and other responsibilities in accordance with the legislative and other normative acts of Tajik Republic.

Early main extended leave, particularly provided to:

- employees, who have not reached 18 years old, not less than 30 calendar days, and can be used by them in summer time or in any other time convenient for them;
- employees who have disability – not less than 30 calendar day (article 152 of the standing Code);

Periods of temporary disabilities, as well as maternity leaves are not included in the yearly leaves.

#### **Article 86. Additional yearly leaves**

Employer is obliged to provide additional yearly leaves:

- to employees occupied with jobs linked with unhealthy and heavy working conditions (article 87 of the standing Code);
- to employees having works with special features (article 88 of the standing Code);
- to employees working in plays with unfavourable climatic conditions (article 89 of the standing Code);
- in other cases covered by legislative and other normative acts, collective agreements and contracts.

#### **Article 87. Additional yearly leaves for unhealthy and heavy working conditions**

Additional yearly leaves for unhealthy and heavy working conditions with duration not less than 7 calendar days are provided to employees, working in mines and in open mining works in log-books and pits, in zones with radiations, at other works with unfavourable impact to the health of a man like unhealthy physical, chemical, biological and other factors.

The list of works, professions and positions, works with unhealthy and heavy working conditions have right for additional leave, as well as continuous leaves, which order and terms are of their provision is determined by the Governments of Tajik Republic.

#### **Article 88. Additional yearly leave for works with special features**

Additional yearly leave for works with special features with the duration not less than 3 calendar days is set for separate group of employees, whose work is linked with high emotional and tense anxiety or peculiarities of the implemented work.

The list of professions and positions of the workers, who have been provided additional leave for a work with special features, as well as concrete duration and conditions of providing these kinds of leaves are determined by the Government of Tajik Republic.

#### **Article 89. Additional yearly leave for work in special natural-climatic conditions**

Additional yearly leave for work in special natural – climatic conditions is set with duration not less than 8 calendar days.

Concrete duration and conditions for providing this leave are determined by the legislative and other normative – legal acts of Tajik Republic.

#### **Article 90. Calculus of yearly leaves duration**

Duration of leaves is calculated in calendar days, not depending from the time schedule of work.

Holidays, which come on the period of leave and are not considered working days according to article 83 of the standing Code, at defining the duration of leave are not calculated.

At calculating the duration of yearly leaves, the additional leaves, which duration is set by the legislations is summarised with the general leave (as well as with the extended one).

At calculating duration of the leave of worked out time, the duration is defined by dividing the whole size of the leave with 12 and multiply to the number of worked out months.

At this the surplus, equal to 15 or more calendar days, are rounded off, and those less than 15 calendar days are thrown out.

#### **Article 91. Calculating the working experience, that gives right to yearly main holiday**

In working experience, that gives right for yearly main leave, are included the following:

- actually worked out days during the work year period;
- time, when the employee actually did not work, however, the working place was kept after him/her;
- time of bound absenteeism at illegal dismissal or transfer to another work with the subsequent re-recruiting at the previous job;

- other periods of time, covered by branch – wise (tariff) agreements, collective contracts and other local acts of the enterprise, and terms of the labor contracts.

If collective contracts and other labor contracts do not cover this, in working experience that gives right to the yearly leave is not included the following:

- time of non – attending work without reasonable excuses by the employee;
- period of unpaid leaves due to caring after child until he/she reaches age that is set by the law;
- period of leaves without keeping salary, provided by the request of the employee, with the duration of 15 calendar days.

Legislative and other normative labor acts can cover any rules of calculating the working experience, giving right at receiving additional leaves.

### **Article 92. Order of proving leaves**

Leave for the first year of work is provided after termination of the 2 month of continuous work at the given enterprise. Until termination of the 2 month of continuous work, a leave can be provided by the following employees:

- women – before the maternity leave or immediately after it;
- employees, younger then 18 years old;
- in other cases, provided by the legislative and other normative acts.

Leave for the second and the following years can be provided in any time of the work year in accordance with the order of proving leaves.

Yearly leaves on request of the employee should be transferred:

- at temporary disability of the employee;
- at implementing other official obligations;
- in other cases provided by legislative and other normative – legal acts of Tajik Republic.

If the reasons counteracting to using the leave, appeared before the leave commenced, then according to the agreement between the employee and employer a new term of using the leave is set.

Leave on the application of the employee is moved to another period, if he/she was not paid on time for the leave.

In exceptional cases, when providing leave to the employee in the current year can have unfavourable impact on the standard work of the enterprise, with the agreement of the employee the leave can be moved to another year. At this the leave should be used not later than, during the year after the effect of the leave.

Not providing leave during two years of work is prohibited, as well as not providing yearly leave to the employees younger than 18 years old, and employees who work at places with unhealthy and heavy working conditions.

### **Article 93. Providing yearly leaves to individuals, returning from prophylactic treatment**

Yearly leaves to individuals, who returned from prophylactic treatment, are provided for the actual worked out time at the last work place.

### **Article 94. Time and order of providing leaves**

Time and order of providing leaves are determined in order provided in collective and labor contracts, by the internal regulations, time schedule of the leaves, agreed with the appropriate employees' representative organs, or are set by the agreement between the employer and the employee.

At determining time and order of providing leaves, first the rights of the employees who have bonus on receiving leaves at specific period.

The employer should be informed about the leave not later than 15 days before the leave.

Invalids and participants of the Grate Patriotic War and other people equal to them by the bonuses are provided by leaves by their own request in summer or another time convenient for them.

Yearly leave is given to men by their request at the period when their wives are at maternity leave.

#### **Article 95. Extending leave**

Employees have right to extend the leave:

- at temporary disability;
- before the maternity leave;
- at sequences the yearly main leave with the academic leave;
- at implementing official or other public responsibilities, if the employee is excused from the duty by the legislation and other normative acts for the implementation.

In cases, where this kind of causes came up during the leave, the leave is extended according to the days or by the agreement of the employee and the employer the unused part of leave will be moved to another term.

#### **Article 96. Dividing the leave into the parts. Recall from the leave**

According to the agreement between the employer and employee the leave can be divided into parts. At this one part must not be less than 12 calendar days.

Recall from the leave is allowed only by the employee agreement.

The part of the leave that was not used should be provided to the employee at any other time convenient to the employee during the work year or joined to the leave for the next work year, will following requirements, provided by the article 92 of the sanding Code.

Recall is not allowed for the employees who are younger then 18 years old and employees, occupied with works at unhealthy working conditions and that have special features.

#### **Article 97. Payment of the yearly main leave**

For the period of the yearly main leave the employee is guaranteed a wage rate not less than the average monthly salary.

Payment of the leave is made in time, set in the collective agreement, in any case not less then a week ahead.

#### **Article 98. Academic leave**

Employees who overlap their work with study are given additional payable leave according to the conditions providing for by article 186, 187,188 of present Code.

#### **Article 99. Leave without keeping the salary**

Due to family or other valid reasons the employee is allowed to go for leave without keeping the salary according to his statement. The duration of leave will be defined according to the agreement between the employee and the employer.

The leave without keeping the salary on statement of the employee is given according to the following:

- 1) participants of the Create Patriotic War and individuals like them as well as the pensioners are allowed to take a leave for 14 days each year.
- 2) parents and wives of military workers, those who died due to the wound, contusion or mutilation, wounded in defence of the country, sickness due to participation in front are allowed to take 14 days of leave every year.
- 3) working invalids – till 2 months in a year.
- 4) in other cases provide for legislative and other normative as well as the collective agreement.

#### **Article 100. Realisation of right for leaves at dismissals.**

Dismissing the employee the employee will be given the cash indemnity for the period of unused leave. On employees wish during the termination of a contract by the employees initiative he can take the unused leave before the dismissal. Accordingly the last date of the leave will be considered the date of dismissal.

During the dismissal the leave can be taken by employee even if the it is out of the duration of labour contract dismissal due to the finishing the period of labor contract.

## **Chapter 7**

### **Labour Payment**

#### **Article 101. Setting the wage rate**

The size of the labour payment fixes on the agreement of employee and employer. The labour payment can not be lower then the minimum size determined by the government (article 103 of present Code) and is not limited by any maximum.

Forms and the systems of the labour payment are determined in collective agreements and contracts.

For institutions and organizations that are financed by from the budget and the governmental enterprises, the terms of labour payment are determined by the Government of Tajikistan Republic.

Part of the payment identified by the agreement of party of labour contract can be produced in natural form.

#### **Article 102. Guarantees for labour payment**

The employee without reference to financial state, is accountable to pay the employee the determined labour payment for implemented work.

Discrimination is forbidden in labour payment. The employer is responsible to pay the same salary for each employee for implemented work. The changes in terms of labour payment that are not favourable for the employee are forbidden.

The size of the labour payment determined by the agreement of party contract can not be lower then determined by the collective agreement and contract.

#### **Article 103. Minimum size of wage**

The monthly wage of the employee who carried out his responsibilities according to the work days can not be less then the minimum labour payment size determined by the government.

The minimum size of salary is the government guarantee (social norm) and is determined by the President of Tajikistan Republic.

The minimum size of the salary is liable to indexation in discipline, agreed by the Low. Allowances, bonuses, and increase of salary (article 105, 106 of present Code) are not included to the minimum size of the salary.

In districts and areas where set up the district coefficient, the coefficient for work in desert, anhydrous and mountainous areas the minimum size of salary determines according to these coefficients (article 104 of present Code).

#### **Article 104. District coefficients and allowances to the labour payment**

In districts and villages with unfavourable climatic and domestic conditions the allowances and district coefficients are added to the labour payment.

The list of districts where the district coefficients and allowances are used the order of the payments is determined by the Government of Tajikistan Republic.

#### **Article 105. Payment for overtime, work in days off and holidays**

Overtime work, work in days off and holidays is paid not less then of double wage-rate( of salary). The concrete payment sizes are determined in the collective agreement, and if it is not concluded then they are identified by the employer after the consultation with relevant representative agency of employees.

#### **Article 106. Labour payment in night**

Every hour of work at night is paid not less then time-and-a-half. The increased salary in night is not included to wage-rate (titular payment).

The concrete size of salary is determined in the collective agreement but if it is not concluded – it is identified by the employer after the consultation with relevant representative agency of employees.

#### **Article 107. Payment for producing rejected produce and delay**



If the product is rejected and delayed through no fault of the employee then the average monthly salary is kept.

Partial reject through employee fault is paid with rate cutting determined by employer after the advice with relevant representative body of employees

Full reject and delay through employees fault is not paid.

#### **Article 108. Time for paying salary**

The time for paying salary is determined in the collective agreement or in other local normative act and can not be rare then one time in a month.

If the day of salary payment will be concurrence with the day off or holiday then the salary should be given before these days.

During the dismissal the amount due to the employee is given in the last working day.

If the salary payment is delay through the fault of employer then he is accountable to pay additional cash according to the bank discount rate for each day of delay.

Employees who are guilty in delay of payment the salary are appear to disciplinary, material, distractive and criminal accountability according to the legislation of Republic of Tajikistan.

#### **Article 109. Deduction of salary**

The deduction of salary is possible according to the general rule with writing agreement of employee, if the agreement does not exist then it happens according to the court decision.

Without reference to employee agreement the deduction is made as following:

- 1) for deduction of taxes and fees to Pension funds;
- 2) for implementing legal agreements and other administrative documents;
- 3) for reparation of unused advance given by the employer
- 4) for reparation of damages accrued by the employee to employer, if the size of the damage is not exceed the employee monthly salary.
- 5) for refund of a sum overpaid due to numerable mistakes
- 6) for used days of leave on dismissal of employee till the end of working year, on account of which he received leave.

When the employee is dismissed the deduction on used leave will not be done, if by the end of dismissal the employee does not have owing payment.

The total size of deduction can not exceed 50% of employee owing salary. The size of salary after the deduction can not be less then minimum size of salary determined by the government.

## **CHAPTER 8**

### **GUARANTEE AND COMPANSATIONAL PAYMENTS**

#### **Article 110. Guarantee for implementation of governmental and social responsibilities by employees**

The employer is accountable to dispense the employee from work temporarily for implementation of governmental and social duties in cases provided by law, keeping the position.

The governmental or social agency which is in obedience to law involves the employee in implementing governmental and social duties and for the convenience of days the employee the average of his salary.

**Article 111. Guarantee for implementation of duties for the convenience of enterprise employees**

Terms of dispensing the employee from his duties for implementation of duties for the convenience of all employees of enterprise and also the size of guarantee payments are determined by the collective agreement.

**Article 112. Guarantee for transferring employee to another permanent low salary job**

When the employee will be transferred to another permanent low salary job in the same enterprise he will receive the previous salary for two months from the transfer date but in case of medical decision in accordance with labour mutilation, professional illness or other case linked with job during all time of work or till the determination of invalidity.

**Article 113. Guarantee for employees are send to medical institutions for observation**

While being in medical institution for observation, which is compulsory, the employee will receive his average earnings. During the observation of employees in prophylactic centres they will receive their average earnings for the whole period of being in the centre.

**Article 114. Guarantee for managers of enterprises and employees who carry out the general management functions in the enterprise**

In the case of dissolution of the contract with the manager of enterprise and the employees who implement the general management functions in the enterprise with the change of owner the new owner is obliged to pay each employee the compensation at the amount of not less then six month salary.

**Article 115. Guarantees to independent category of employees**

Guarantees are given to independent category of employees: donors, inventors and innovators, employees who are sent training and others enacted into law and other normative –legal acts of Tajikistan Republic.

**Article 116. Calculation of average salary**

The discipline of calculation of average salary owning the employee in any cases ( in production of guarantee payment in implementation of governmental and

social duties, in payment of days of leave, in payment of salary in transfer to another job, in case of restitution of damages, in back pays and other), except for average salary in pension is determined by the Republic of Tajikistan.

#### **Article 117. Compensation of expenses concerned with job**

The additional expenses of employee, concerned with implementation of job descriptions, should be repaid by the employer according to the discipline adjudged legal and normative acts as well as the labour agreements (contracts). The minimum size of the compensations is adjudged by the Government of Republic of Tajikistan.

#### **Article 118. Compensate the expenses during the business trips and job with often trips**

During the business trips and other trips the following are compensated:

- expenses, concerned with the housing ( per diem)
- travel expenses
- house rent expenses
- other expenses made by the employee with allowance of the employee

The size of compensation of the expenses are determined according to the agreement of employer and employee, and they can not be less then the sizes fixed for the employee by organisation, financed from the budget.

In institutions and organisations that are financed from the budget, the size of expenses repayment is determined according to the order, adjudged by the Government of Republic of Tajikistan.

The employees being in the business trips will keep their job (position) and average salary during the trips.

#### **Article 119. Compensation of expenses in taking on to the job in other area**

While taking on to the job in other area the followings are being repaired:

- expenses of employee's and his family moving and the transportation of his property
- expenses of setting in a new place

The sizes of compensation of expenses are determined under agreement of the employer and employee, but they can not be less then the sizes fixed for the employees by organisation, financed from the budget.

In enterprises that are financed from the budget the sizes of expenses compensation are determined in order adjudged by the Government of Republic of Tajikistan.

#### **Article 120. Compensation of expenses while using the private property of employee**

If employee uses his own property on behalf of employer with his writing agreement

(agreement, order, and direction) the following are compensated:

- 1) Amortisation of tools
- 2) Amortisation of personal transport and expenses of its usage

- 3) Amortisation and expenses for usage of other technical means owned by employee.

The size of the repayment is determined under the agreement between the employer and employee

## **CHAPTER 9**

### **THE LABOR DISCIPLINE**

#### **Article 121. Labour standing order in enterprise. Rules and regulations on discipline**

##### **Responsibilities of employer and employee**

The labour standing order in the enterprise is determined bylaw which is confirmed by employer and with agreement of representative body of employees.

For separate categories of employees act rules and regulations on discipline, confirmed in legal order. Every employee have to be familiarized with labour standing order and rules and regulations beforehand.

The employer is obliged to provide the labour and productive disciplines, follow steady legislation on labour, should not demand from the employee to carry out the illegal actions as well as actions that are not included in the job description, actions that put in jeopardy the life of employee and other individuals.

The employee should follow the rules of labour standing order, technical rules, call for environmental protection, prevention of accidents and production sanitary, orders and directions of employer concerned to labour functions of employee, be polite with employer, colleagues, clients of the enterprise and other individuals whom he contact with during the work.

#### **Article 122. Rewards for labour**

The employee gives the following rewards for success, effective, innovation and other achievement in the work:

- 1) express gratitude
- 2) give bonuses
- 3) reward with expensive present
- 4) reward with honourable monument
- 5) include in honour board and honour book

Other rewards can be given according to the standing order. The employees can be nominated for significant contributions for governmental rewards.

#### **Article 123. Summary punishment**

The employer can apply the following summary punishment in case it employees will not follow and implement their responsibilities set in their job description:

- 1) remark
- 2) reprimand

3) dismissal (articles 3,4,5,6,7,10,11, parts of fist article 46 of present Code)

According to the Law of Republic of Tajikistan, rules and regulations on discipline can be provide for separate categories of employees and other disciplinary statements. It is forbidden to apply arrangements of disciplinary action that are not provided for law, rules and regulations on discipline.

#### **Article 124. The order of applying the summary punishment**

Before applying any summary punishment the employee will be asked to submit the writing explanation. The reject of submitting the explanation will result in the applying of summary punishment.

The summary punishment can be used in case if any incense action is found not later then a month from the date of displaying. It can be used even if the employee is in sick leave or holiday.

The summary punishment can not be used later then six month from the day of displaying of action, if it is displayed after the revision or checking the financial – economical activity then it can be applied later then 2 years from the day of its commitment. In indicated period is not included the time of production on criminal action.

While using the summary punishment takes into account the degree of action, the circumstances of it commitment, a foregoing work and employee behaviour.

For each action can be inflict only one summary punishment. Order (dictation) or decree on applying the summary punishment is announced to employee against receipt.

The summary punishment can be appealed in the order, adjudged for consideration of individual labour disputes.

#### **Article 125. The terms of summary punishment**

The term of summary punishment can not exceed of one year from the day of its applying. If during this period the employee will not be exposing to the new summary punishment then he is considered not exposing to the summary punishment.

The employer who applied summary punishment have a right to take off the summary punishment till the end the year on the own initiative, on employee request, on intercession of appropriate and representative organ of employees of enterprise or the indirect manager of the employee.

## **CHAPTER 10.**

### **MATERIAL RESPONSIBILITY OF LABOR CONTRACT OF THE PARTIES**

**Article 126: Obligations of the labor contract parties to repair the damage, caused to the other side**

The party of the labor contract, caused a damage during the process of work to the other side, repair the damage according to the standing Code, legislation and other normative acts of Tajik Republic.

The labor contract or another additional agreement made in a written form, as well as collective contract can concretize the material responsibility of the labor contract's parties. At this the contracted responsibility of the employer in front of the employee should not be lower, and the responsibility of the employee in front of the employer higher than it is stated by the standing Code, legislation and other normative acts of Tajik Republic.

Termination of the labor relationships after causing damage does not release the contract parties from the material responsibility, covered by the standing Code, legislation and other normative acts of Tajik Republic.

#### **Article 127: The attachment of the conditions for the material responsibility of the labor contract parties for causing damage**

The material responsibility of the labor contract's parties fall due to the damage, caused by the second party of the contract as a result of its guilty conduct (action or inaction) or causal relation between the guilty conduct and causal damage.

The responsibility of the employee for the caused damage to the employer is excluded, if the damage come up in the result of irresistible forces, normal economic risk, critical situation or defensive necessity.

#### **Article 128. Damage, liable for the employee's compensation**

The employer compensate to the employee for the caused damage (as well as for the moral damage) in full size, if other is not covered by the standing Code.

Moral damage is compensated in monetary form or other form in a size identified by the employer and employee, in case of dispute by the law court.

#### **Article 129: The obligation of the employer to compensate the damage for the employee, caused in the result of illegal divestment of opportunity to working**

The employer is obliged to compensate to the employee the uncollected salary in all cases of illegal divestment of opportunity to working. This obligation arises if the salary is not collected as a result of:

- 1) illegal refusal in accepting to work, suspension from work, and transferring to another work or dismissal;
- 2) untimely fulfillment of the organ decision on reviewing labor disputes on re – recruiting to the previous work;
- 3) delay of the employment history delivery;
- 4) amplification by every means of information negatively affecting the employee.

The obligation of employer in this case arises, if the dismissed employee face difficulties in applying to another job.

#### **Article 130. Material responsibility of the employer for the damage caused to the employee**

The employer, caused a damage in a result of improper implementing his/her responsibilities according to the labor contract to the personal property or other property of the employee, compensate it fully. The size of the damage is calculated according to market prices, functioning at the given location, at the moment of the compensating the damage.

According to the parties agreement or by the decision of the law court the damage can be compensated in kind.

### **Article 131. The order of reviewing matters on compensating the damage caused to the employee**

The application for compensating the damage is given to the employer by the employee. The employer is obliged to review the application and take appropriate measures during the period of ten days from the day it was received.

In case of disagreement of the employee with the decision of the employer or at not receiving any answer from the employer at the defined term, he can apply to the organs reviewing the labor disputes.

### **Article 132. The material responsibility of employee for the damage caused to the employer**

The employee is obliged to compensate to the employer for the caused direct real damage, if other is not covered by the standing Code, legislative and other normative acts of Tajik Republic.

Direct real damage means real reducing or worsening of the personal property (also leasehold property from the third person) as well as necessity for the employer to make expenditures on gaining or recovering the property, or making spare expenditures.

The employee incurs responsibility for the direct real damage, as an immediate damage caused to the employer, as well as occurring by the fault of the employee in the result of compensating to the third persons by the employer.

### **Article 133. The employer's right to decline the compensation for the damage from the employee**

The employer has a right with taking into consideration concrete circumstances, during which a damage was caused, as well as considering the financial status of the employee, fully or partly refuse from the compensation.

At the enterprises with the state type of property, the specified decision is taken by the employer with the agreement of the employee's representative organ of the enterprise, and the compensation of damage in this case on account of the enterprise.

### **Article 134. Limitations of the employee's material responsibility**

Employee, by whose fault a material damage was caused to the employer, incurs material responsibility in the size of direct real damage, but not more than his/her average monthly salary size.

Material responsibility higher of the average monthly salary is accepted only in cases, indicated in article 136 of the standing Code.

### **Article 135. Limited material responsibility of the employee**

In accordance with the legislation of Tajik Republic limited material responsibility lies on:

- 1) employees – in the size of caused damage by their fault, but not higher than their average monthly salary for the damage or destruction by the carelessness of the materials, intermediate goods, products as well as during their production. For the same size the employees incurs responsibility or destruction by the carelessness equipments, metrical instrumentation, special clothing and other things, given away by the enterprise for their utilization;
- 2) the employers of enterprises and their deputies, as well as the heads of the enterprise departments and their deputies – in the size of the caused damage by their fault, but not higher than their (employees) average monthly salary; if the damage was caused with extra payment of damage, by incorrect statement of accounting and keeping material and financial values, by not taking measures on preventing of producing poor quality production, embezzlement and spoilage of material and financial values;
- 3) office bearers in cases and within the ambits, covered by the article 203 of the standing Code.

### **Article 136. Cases of entire material responsibility of the employee**

Entire material responsibility of the employee composes of his/her responsibility to compensate the damage in the entire size.

Material responsibility in the entire size of the caused damage rests of the employee at the following cases:

- 1) for the shortage of values, entrusted to the employees on the basis of written contract;
- 2) for the shortage of values, received by non-recurrent documents;
- 3) on the basis of special legislative acts;
- 4) purposeful causing damage;
- 5) causing damage in drunk or toxic state;
- 6) causing damage in the result of criminal action, set by the decision of court;
- 7) causing damage not during the implementation of labor responsibilities;
- 8) purposeful divulgation of official, commercial secret, if the conditions of keeping in secret are covered by the labor contract. At the purposeful divulgation of official and commercial secret, the employee also compensate to the employer the uncollected income (lost profit), which the employer would receive if his/her rights would not be broken;
- 9) in cases when in accordance with the legislative acts the employee is rested entire responsibility for the damage, caused during implementing working responsibilities.

The responsibility in entire size of the caused damage can be set by the labor contract, made with the head of the enterprise, his deputies and financial manager.

### **Article 137. Entire material responsibility of the employee for shortage of values, entrusted to the employee on the basis of special written contract**



The employee, directly maintaining financial and tradable values, incurs entire material responsibility for shortage of these values, entrusted to him/her on the basis of special written contract.

With the employee, who reached eighteen years old, directly maintaining financial and tradable values, during being hired to work as well as afterwards in addition to the labor contract can be made special written contract on entire individual and brigade material responsibility.

The list of the group of employees, with whom the indicated contracts can be made, set collective contracts, if its not made it will be determined by the employer in agreement with the employees' representative organs of the enterprise. At the same order is set the list of sections (departments) where in a joint implementation of work by the employees, directly maintaining the financial and tradable values, can be introduced brigade or other collective material responsibility.

Contract about individual or brigade, or other collective material responsibility concretize the obligations of the labor contract parties on providing maintenance of values, entrusted to the employee (collective) and determine their additional rights, obligations and responsibilities.

According to the contract about the entire individual material responsibility, the values are handed in to a concrete employee, who incurs personal responsibility for its shortage. For releasing from responsibility, the employee, with whom the contract was made the given contract, has to prove the absence of his/her fault.

According to the contract about brigade (collective) material responsibility, values are entrusted ahead to the defined group of individuals (brigade), which was entrusted the entire material responsibility for its shortage. For releasing from the responsibility, individual member of the brigade has to prove the absence of his/her fault.

At the enterprises, occupied with maintaining values (keeping, realization, transportation and elaboration), a risk foundation can be established by the employer after consultation with the employees representatives organs of the enterprise, on account of which a compensation of shortages is accepted.

At free will payment of the damage (article 140 of the standing Code) the degree of the each member of the brigade fault is determined on agreement between all brigade and the employer. At the recovery of damages in the legal order the degree of the fault of each member of the brigade is determined by the court.

### **Article 138. Determining the size of the damage**

The size of the caused damage to the employer is determined according to the factual damage on the bases of data from the accounting documentations.

At the loss, waste or loss, waste or embezzlement of the employer' property, belonging to the main foundation (recourses), the size of the compensation is calculated on the basis of the market prices, operating in the given location at the day of the causing the damage (but not lower then the balance cost on account of the degree of the damage).

In other cases, the size of the damage is calculated according the market price, operating in the given location at the day of causing the damage.

A special order of determining the size of the damage compensation can be set by the Government of the Tajik Republic, as well as in multiple calculation, caused to the employer by embezzlement, purposeful waste, shortages or losses of separate

kinds of property or other values, as well as in cases, when the factual size of the damage exceeds its nominal size.

**Article 139. The obligation of the employer to set the size of the caused damage and the reason of its originating**

Until making decision on damage repayment by concrete employees, the employer is obliged to conduct a check up for determining the size of the caused damage and the causes of its origination.

For conducting such a check up, the employer has a right to found a commission with the participation of appropriate specialists.

Requiring explanations in a written form for identifying the reasons is compulsory.

The employee has a right to get acquainted with all materials (documents) of the check up, and participated during it.

**Article 140. Free will paying for the damage by the employee**

The employee, guilty in causing damage to the employer, can do free will paying entirely or partially.

Free will paying is implemented within the limits, covered by the standing Code.

By the agreement of the employer and employee the compensation of the losses is allowed with payment with instalments. In this case the employee provides a letter of intent about free will paying for the damage, with indicating concrete deadlines for the payment.

If the employee, who gave letter of intent about free will paying, did not compensate it due to termination of the labor relations, then the outstanding debt is recovered.

**Article 141. Order of recovering of damage**

Recovery from the damages from the employee, not higher than the monthly salary, is made by the arrangements of employer. The arrangement can be done not later than two weeks from the day of discovering the damage.

If the sum of the caused damage, liable to recovery from the employee, is higher than his/her average monthly salary or the two weeks deadline terminated from the day of discovering the damage, the recovery is implemented through the law court.

**Article 142. Recovery of losses, caused to the governmental enterprise by the head of the enterprise**

The damage, caused to the governmental enterprise by the fault of its head (manager), is recovered with following all the rules, set by the standing Code.

The decision on recovery from the head of the governmental enterprise is made by the organs, implementing proprietorship. This organ will also charge the manager the compensation for the caused damage in a legal order.

**Article 143. Decreasing the size of the damage repayment callable from the employee by the law court**

The court can on account of the degree and form of the fault, concrete circumstances and financial state of the employee decrease the size of the damage repayment which is callable.

Decreasing the size of the callable damage repayment from the employee is not acceptable, if the damage was caused through crime, made by a motive profit.

## **CHAPTER 11.**

### **LABOR PROTECTION (OCCUPATIONAL SAFETY AND HEALTH)**

#### **Article 144. Requirements of the labor protection**

Conditions must be created which fit the security and hygiene requirements at all enterprises. Creating these conditions is an obligation of the employer.

Requirements on the labor protection are set by the legislation and other normative – legal acts of Tajik Republic.

The employer carries the responsibility for failure to comply the requirements of labor protection.

#### **Article 145. The rights of the employees to have information on labor protection**

At negotiating the labor contract the employee has to be informed about the labor conditions by the employer, as well as about the availability of unhealthy and risky industrial factors, risks of being affected by professional and other illnesses, and about getting bonus and compensations to the employee, also means for individual security.

The employer is obliged to regularly (not less than once in a year) inform the employee or their representatives about the status of the labor conditions at the working places, about the results of the check ups of the labor conditions, implemented by the monitoring organs, about the measures taken for providing healthy and safe labor conditions, as well as to provide this information by the employee's request.

Non-compliance of the given requirements by the employer is a cause for impleading in accordance with the legislation of Tajik Republic.

#### **Article 146. Medical check-up of some groups of employees**

The employer is obliged to organize preliminary-at making the contract - and periodical-during the process of work- medical check up of employees, who are occupied at works with unhealthy and unsafe working conditions, including working underground at night times, as well as works linked with the transport, in order to define the employee compatibility of their health for the implementing the work and preventing professional illnesses.

Employees occupied in food industry, catering, trade and in other fields, directly serving the population, go through medical check up for the purpose of population health protection, preventing and spreading illnesses.

Medical check up are conducted at works with special risky working conditions.

The employee has a right to require unscheduled medical check up, if he/she thinks that the deterioration of his/her health is linked to the working conditions.

List of unhealthy industrial factors and works, when during its implementation preliminary and periodical medical check up are conducted, order and frequency of their conducting are set by the government of Tajik Republic.

At evasion of the employee going through the medical check up and his/her non-fulfillment of recommendations, the employer has a right not to allow the employee to continue his/her work.

The employees are not charged for the medical check – up.

#### **Article 147. Bonus and compensation for the employees, occupied with works at unhealthy working conditions**

At works with unhealthy labor conditions employees are given milk and other equivalent food products by the set norm free of charge.

The norm of distributing milk and other equivalent food products, order of their delivery, list of chemical agents, at working with them at a purpose of prophylactic it is recommended to use milk and other equivalent food products, is set by the normative acts.

At works with extra unhealthy working conditions a medicative-prophylactic food is provided free of charge.

List of manufactures, professions and positions, working at which gives right to receiving medicative-prophylactic food; the ratio of this food and rules of its delivery are affirmed in an order, set by the government of Tajik Republic.

Except the given bonus and compensations, the employer is obliged to provide the employee other bonuses and compensations determined by the legislation.

#### **Article 148. Providing special clothing (uniform) and other means for individual safety and hygiene**

The employer is obliged to provide uniform, special footwear, and other means for individual safety and hygiene free of charge, according to the norms set, to employees occupied at works with unhealthy and risky working conditions, as well as in unfavorable climatic conditions and pollution.

Maintenance, laundry, disinfection and repairing of the uniforms, footwear, and other means for individual safety, delivered to the employer, are provided by the employer.

The employer compensate the expenses made by the employee to get the uniform, special footwear and other means for individual safety, if the given means were not delivered to him/her or the deadline of their deliverance was broken and the employee had to get these means on his/her own. At the pre-term wear and tear of the means for individual safety not by the fault of the employee the employer is obliged to replace them.

In case if the employee was not provided by means of individual safety and the employee faced danger he/her has a right to terminate working. The time of terminating work is liable for payment as a demurrage not by the fault of the employee.

#### **Article 149. Instructing the employees on rules of labor protection and safety methods of work**

The employer is obliged to organize briefing on labor protection and training about safety methods of work for all the incoming employees, as well as the transferred to another job employees.

A training on occupational safety with exams after their termination should be conducted for incoming employees hired at manufactures with high rate risk, with a subsequent periodical assessment.

Briefing, training and periodical testing of the employees' knowledge, including the specialists, managers, responsible for the occupational safety, is implemented in order and time covered by appropriate normative acts.

Individuals, who did not go through the briefing and instruction on occupational safety and safe methods of work should not be admitted to work.

Knowledge of rules and norms of safety and protection of labor are one of the elements of qualification requirements, presented to the employees.

#### **Article 150. Terminating the work by the employee in case of risk to his/her life and health**

In case when the employee find out an presence of risk to his/her life and health, and can not remove it with the means available he/she has a right to terminate the work, not being afraid to get punishment.

The employee has to immediately inform about the hazardous situation of the working process to the head (team manager, master, head of the site) or organs of labor protection of the enterprise. For the period of removal the hazardous situation the average salary is kept after the employee.

#### **Article 151. Transfer to an easier work on the health status**

Employees, who need to be provided by an easier work due to their health status, as well as due to traumas, professional illnesses or other injures, as a result of implementing the working responsibility, the employer is obliged to transfer them, with their agreement to a work, in according with the medical settlement, temporary or without limitations of time, creating if necessary new working places (vacancies), shops and sites.

The payment for work for the employees who have been transferred due to the health status, or repaying bonus or social insurance are made in order, determined by the legislative or other normative acts of Tajik Republic.

In cases when due to the injures, professional illnesses or other traumas, related to the implementation of work by the employee, it is required to retrain him/her, the employer for rational placement of an employee who needs to be retrained is obliged to organize his/her preparation with keeping his/her average monthly salary for the period of retraining, but not more than for twelve months.

If its not possible due to the industrial conditions organize rational placement of employee, who got injured, professional illnesses or another trauma linked to the implementation of work, the labor contract can be terminated with a retirement benefit.

The size of the retirement benefit is determined by the agreement of the parties and can not be lower that six months average monthly salary.

### **Article 152. Additional measures on labor protection for invalids**

The employer is obliged to accept invalid, who were instructed to work by the population occupational service, to a working places on account of determined quota. The recommendations of medical examining body about the schedule of part time job, reducing duties and other working conditions for the invalids are compulsory for implementation by the employer.

Six our working day is set for the working invalids without decreasing the salary.

Invalids of the 1 and 2 group are provided with holiday in 36 calendar days, and invalids of 3 group – 30 calendar days.

Using invalids to work during night time, as well as giving them extra work on holidays is admitted only with their agreement and only in conditions when the work is not prohibited by the medical staff.

### **Article 153. Sanitarian-welfare and medical service of the employees**

Depending from the type of work at the enterprise and on account of the employee's needs the employer is obliged to provide the employees with drinking water and organize food for them; equip sanitarian-welfare rooms at the enterprise: dressing rooms, bathrooms, rest rooms (where the employees can have a rest), toilets, rooms where they can have medical help in case any of the employees would get trauma and injures.

The employer is obliged to organize appropriate services and offices for health care (hospital, medical point) in an order determined by the government of Tajik Republic.

### **Article 154. The obligations of the employee on following the norms, rules and instructions of occupational safety**

The employee is obliged to meet the norm requirements, rules and instructions of occupational safety, use the means for occupational safety, immediately inform his/her direct manager (team manager, master and the manager of the site) in any situations, due to which a direct danger occurs, as well as in any other accident which happens during the process of work or related to that.

The employee can be appealed to disciplinary and material responsibility, and in cases covered by the Law – nail on charge.

### **Article 155. Documenting and investigation of accidents at the industry**

The employer is obliged to immediately conduct an investigation of the reasons of the accident, make a report and organize timely documentation on the accident at the industry.

By the requirements of the sufferer the employer is obliged to give him/her certified copy of the report (act) of the accident not later than three days from the termination of the investigation.

At the refusal of the employer to make an act about the accident and with the disagreement of the sufferer with the facts written on the act, the sufferer has a right to appeal to an appropriate employees' representative organs or court.

### **Article 156. Repayment of damage in case of injury or death of the employee**

The employer is obliged to repay for the damage, caused to the employee by the source of the high rate danger, if he/she will prove that the damage occurred as a result of force majeure or the purpose of the sufferer, in an order covered by the legislation and other normative acts of Tajik Republic.

At causing damage in usual conditions (not at a high rate risk) the employer can be released from repayment of the damage, if he/she can prove that the it was not caused by his/her fault.

The lost salary is liable for compensation, expenses linked with injure, as well as moral damage.

At allocation and payment of means for compensating the damage, the sufferer salary, stipend, pension and other incomes are not counted.

Employees who got disability as a result of accident at the industry, and in case of people's death, who lived on his/her dependence, a one time dowries is set except the determined one, in an order and size provided by the legislative acts of Tajik Republic.

In case of the sufferer's death disable persons, who were dependants of the dead man, or who had right to receive his/her money, as well as the child of the dead employee, who was born after his death will have a right to get the compensation.

A compensation (pension) in case of the wage-earner's death is not scored up on account of the payment of the damage.

A moral damage is compensated by the employer if his/she is guilty in causing the damage in a size, determined by the agreement with the sufferer, or the citizen who has the right to repay the damage due to the sufferer's death. At occurring conflict the size of the moral damage is determined in a legal order.

### **Article 157. Control after the fulfillment of the rules and norms of occupational safety by the employee**

Frequency control after the fulfillment of all the rules and norm of occupational safety and labor protection requirements by the employees is implemented by the employer.

### **Article 158. Monitor and control after the status of labor protection**

State monitoring and control after the status of labor protection is implemented by the governmental organ, not depending with its activity with the employer.

Public control after fulfillment of norms and rules of occupational safety is implemented by professional unions and other employees representative organs.

## **CHAPTER 12.**

### **ADDITIONAL GUARANTEES FOR WOMEN AND INDIVIDUALS WITH FAMILY RESPONSIBILITY**

### **Article 159. Guarantees at hiring pregnant women and women having children**

It is prohibited to refuse to women in job, or decrease their salary using the motives of pregnancy or having children. With the refusal to hire pregnant woman or woman who have children under 3 years old, and single mother with a child with a children under 14 years old (and with a child invalid under 16 years old) the employer is obliged to inform them about the reasons of refusal in a written form. The refusal in hiring to work to the given individuals can be appealed at the court.

The employer is obliged to hire women, who were directed by the population occupational agents in order of placement, at working places on account of the determined quota.

#### **Article 160. Occupations, where the women's labor is prohibited to use**

It is prohibited to use the women's work in mines (underground) in difficult works, and works that are linked with an unhealthy conditions, as well as in loading and replacing heavy things exceeds the limited accepted norms.

The list of manufactures, works, professions, and positions with difficult and unhealthy working conditions, where the labor of women is prohibited, and limited accepted norms of loading for woman in loading and removal heavy things by hand are determined by the government of Tajik Republic.

#### **Article 161. Limitation of women labor at night time works**

Using woman in night time works is not allowed, except branches of national economics, where it is very necessary. In organizations with allied work, women having children under 14 years old (and children invalids under 16 years old) on account of possibility of the industry a preference is given to use women's work in a day time.

Concrete branches of national economics, production and some types of work, where the women's labor is allowed in night time, is determined by the government of Tajik Republic.

#### **Article 162. Limitations in attracting women to overtime work and works on weekends and holidays, and business trips**

It is not allowed to use the labor of pregnant women and woman who has children under 3 years old in overtime work, working on weekends and holidays and sending them to business trips.

Woman, having children under 3 to 14 years old (invalids under 16 years old) can be used in overtime work or sent to business trips only with their agreement.

#### **Article 163. Transfer to an easier work the pregnant women, and women having children under 6 months old**

Norm of work and service is reduced to the pregnant women in accordance with medical conclusion, or they can be transferred to an easier work where there is no unfavorable factors with keeping monthly salary from the previous work.

Until taking decision about providing another easier work excluding the affect of unfavorable factors of work, she is liable for release from work with keeping her monthly average salary for the days she missed working days due to this process.



Women having children under six months old, in cases when the implemented work is not favorable for lactating women, since it will not allow the mother to follow the breastfeeding schedule. These women are transferred to another work with keeping the monthly average salary from the previous job until their child is six months old.

#### **Article 164. Maternity leaves**

Women are provided maternity leaves for the duration of 70 calendar days (in case of complicated labors -86, and at giving birth 100 days) with paying benefit from the state social insurances.

The maternity leave is calculated in total and is given to the women at once, independent from the days factually used by her until the labor.

#### **Article 165. Leaves for baby minding**

After the termination of maternity leaves if the women wishes she is provided a leave for looking after her child until he/she reaches 6 months old with a payment for this period according to the state social insurance.

Woman is provided also by an additional leave without keeping the salary after looking her child until he/she reaches 3 years old.

Leaves for baby minding can be fully used or partly by father of the child, grandparents or other relatives or trustee, factually fulfilling the care after the child.

By request of the woman or individuals indicated in part 3 of the standing article, during their leave for baby minding they can work in conditions of half working day or at home with keeping rights for receiving benefit from the state social insurance.

During the leave the working place is reserved (position).

Leaves for baby minding are scored up in general continuous working experience, as well as working by specialization (except cases appointing pension due to special working conditions).

In working experience, giving rights for further paid leaves, time of the leaves for baby minding are not scored up.

#### **Article 166. Leaves for individuals who adopted infants or having trusteeship for children**

Individuals, who adopted children directly from the maternity home or having trusteeship on them, is provided with a leave for the period of beginning the trusteeship till the termination of 70 (at taking 2 children – 100 days) calendar days from the baby's day of birth with the payment for this period a benefit from the state social insurance, and by their requests additional leaves for baby minding until the child/ren are reach 6 month or 3 years (article 165 of the standing code).

#### **Article 167. Breaks for feeding the child**

Women who have children at the age of 6 months are provided except times of rest and food additional breaks for feeding the child.

These breaks are provided not less than every three hours, with the duration of 30 minutes. If she has more than 2 children at the age of 6 months the duration of the break is set for not less than an hour.

Breaks for feeding children are included to the working hours and are paid on the average salary.

By the request of the woman, who have a child, the breaks for feeding the child can be join to the breaks for rest, since in summarized type they are moved to the commence as well as the end of the working day with the relevant reducing.

#### **Article 168. Setting under time (half working day) for women and individuals with family responsibilities**

By the request of the pregnant woman, women having children at the age of 14 years old (an invalid child – at the age of 16 years old), as well as women who has dependents to take care of in accordance with the medical conclusion, the employer is obliged to set an undertime or half working week (article 64 of the standing Code).

#### **Article 169. Additional holidays**

One of the parent (trustee) bringing up the child – invalid at the age of 16 years old is provided one day off in a month with a payment in a rate of daily salary on account of state social insurance.

#### **Article 170. Privileges for women at setting order of providing yearly leaves**

Yearly leaves are given to pregnant women and women giving birth to a child by their request, accordingly before the maternity leave and after it, since after the leave of baby minding independent from the working experience at the given enterprise.

Woman having two or more children under 14 years old or a child – invalid at the age of under 16 years old as well as to single mothers – having child under the age of 14 years old (child – invalid under 16 years old) are provided yearly leaves by their request in summer time or any other time convenient for them time.

#### **Article 171. Leaves without keeping the salary for women having children under 14 years old**

Women having children two or more children at the age under fourteen years old (or child – invalid at the age under 16 years old) are provided by their request yearly leaves without keeping salary with the duration not less than 14 calendar days. This leave can be join to the yearly leave or used separately (entirely or partly) at the period set by the agreement of the employer.

#### **Article 172. Guarantees for pregnant women and women having children, at terminating the labor contract**

Termination of labor contract with the pregnant women and women having children under 3 years old (single mother with having child – invalid under 16 years old) on the initiative of the employer is not allowed, except cases entirely liquidation of the enterprise, when the termination of the labor contract is accepted with compulsory placement. Placement of the given women (providing them with work) is made by the

covenant of the liquidated enterprise, and at the absence of the covenant the compulsory help is rendered in finding appropriate work and their placement is implemented by the state organs of population occupation with providing at the period of placement appropriate social repayments set by the legislation.

Compulsory placement of the given women is implemented by the employer also in cases terminating the labor contract due to termination of the term. At the period of the placement the salary is reserved but not higher than three months from the day of the labor contract's termination.

**Article 173. Guarantees and privileges to individuals bringing up children without mothers.**

Guarantees and privileges provided to women who are mothers (limitations of night time work and extra work, not using their work at the weekends, and sending to the business trips, providing additional leaves, setting preferential schedule of work and other guarantees and privileges set by the legislative and other normative labor acts), spreading at fathers, bringing up children without mothers, (in cases of her deaths, disablement of parental rights, long stay in hospitals and in other cases of maternal care of children) as well as on trustees of underage.

**CHAPTER 13.  
ADDITIONAL GUARANTEES FOR YOUTH**

**Article 174. Age, which allows to be employed**

It is outlawed to employ a person under the age of 15. For preparation of youth to productive labour, with the consent of one of the parents or a person that substitutes him, it is permitted to employ the students of general educational school, vocational schools and special secondary educational institutions for fulfilling simple work, which does not cause health damage and breaches the process of studying in spare time until the age of 14.

All persons under age of twenty one are employed only after the prior medical inspection (article 146 of the present Code).

**Article 175. Guarantees on job placement for persons, who are under eighteen**

Employer is obliged to give an employment for the graduates of general educational schools and other persons under eighteen, who are sent from population's employment office in the course of job placement in account of the fixed quota.

Refusal in giving an employment in account of quota is prohibited and can be appealed in legal form.

**Article 176. Rights of minors in labour matters**

Persons under eighteen are equaled in rights to minors in labour matters, and in the area of labour protection, working time, leaves and some other working conditions possess the privileges, established for them by the present Code, legislative and other normative and legal actions of the Republic of Tajikistan.

**Article 177. Works, where is outlawed to use the labour of persons under age of eighteen**

It is outlawed to use the labour of persons under age of eighteen in hard works and works with harmful and dangerous working conditions, in underground works and also works, which implementation could cause health or moral damage. It is not allowed for the mentioned persons to carry and transfer by hand the weight exceeding the limited norms, fixed for them.

The list of works with unfavorable working conditions, where is outlawed to use the labour of persons under eighteen, and limit norms of burden in lifting and carrying by hand the load is established by the legislative and other legal actions of the Republic of Tajikistan.

**Article 178. Reduced duration of working time for persons, who are under eighteen.**

The duration of work for employees of ages fifteen to eighteen is established for no more than 35 hours in a week, and for persons of fourteen till fifteen – no more than 24 hours in a week.

Duration of working time of students, who are working during the academic year out of studying hours, can not exceed the half of the maximum working time's duration provided by the first section of the present article for persons of the proper age.

**Article 179. Payment of employees under the age of eighteen at reduced duration of daily work**

Payment of employees under the age of eighteen at reduced duration of daily work is made in the same amount as for employees of the proper categories at the full duration of daily work.

Labour of students working in enterprises out of studying hours is paid in accordance with working time or depending on productivity.

**Article 180. Annual labour leave for persons under age of eighteen**

For employees under eighteen years old there is provided an annual labour paid leave with duration of no less than 30 calendar days and which can be used during in summer days or at any other season that is appropriate for them.

If the working year for which the leave is provided, covers the period before and after reaching eighteen years by an employee then the duration of leave is estimated for working experience before reaching eighteen years on the basis of thirty calendar days, and for working experience after reaching eighteen – on the general basis.

**Article 181. Prohibition of involving persons under eighteen in night-time, overtime works and works in weekends and holidays and also sending them to business-trips.**

It is prohibited to involve employees under eighteen in night-time and overtime works, works in weekends and holiday days, and also sending them to business-trips.

**Article 182. Additional guarantees for employees under eighteen at termination of labour agreement (contract).**

Termination of labour agreement (contract) with employee under eighteen in initiative of employer besides following the general rules is allowed only with the consent of local labour and population's employment body and commission on minors' actions.

**Article 183. Termination of labour agreement (contract) on demand of parents, tutors (trustees) and authorised agencies**

Parents and tutors (trustees), and also authorised for that agencies have the right to demand the termination of labour agreement (contract) with persons under eighteen years, if the continuation of work threatens their health or is connected with other damages for them.

**CHAPTER 14.**

**PRIVILEGES FOR EMPLOYEES, WHO COMBINE THEIR LABOUR WITH STUDYING**

**Article 184. Creating conditions for combination of labour with studying**

For employees obtaining occupational professional education, upbringing their qualification or studying in educational institutions without tearing from work, the employer is obliged to create necessary conditions for combination of work with studying.

**Article 185. Organisation of employee's continuing professional education**

Employer is obliged to conduct for the employees professional preparation, retraining, to train them the second professions, to provide the growth of employees' professional upbringing directly in place of occupation or in professional educational institutions. On completion of professional education the employee is given a proper qualification (grade, class, category) on profession and provided with the job in accordance with the obtained qualification.

General professional education of employees is considered in upbringing of qualification of grades, class, category and defining the amount of salary in case of promotion.

**Article 186. Privileges for employees studying in educational institutions**

Employees that are studying in educational institutions without tearing off from work and fulfilling the curriculum have the rights on additional paid leave, reduced working week and other privileges in the course and conditions of established legislative and other normative actions.

By agreements, collective contracts and other local normative actions of an enterprise there can be fixed additional privileges for employees studying in educational institutions at the expense of enterprises, which send them for study.

**Article 187. Privileges for those, who are studying in general educational institutions**

Employees, who study successfully in general educational institutions without tearing off from work, have the rights on decreasing of working week for no less than one working day or on number of hours appropriate for him (at decreasing of working days during the week).

Students of general educational institutions become free during the academic year no less than 36 working days at six-day working week or on proper number of working hours for him. At five-day working week the total number of free hours changes depending on duration of working shift at preservation of number of free hours.

In time of block release the students are paid no less than 50 % of an average salary from their place of working, but no less than established amount of minimum working payment.

Students of general educational institutions have the rights on additional paid leaves from the place of their work to sit for examinations of the duration no less than fixed by legislative and other normative actions of the Republic of Tajikistan.

### **Article 188. Privileges for students of professional general educational institutions**

Employees of in-service studying in vocational schools or other educational institutions of the same level of professional education are provided from the place of work with additional leaves with preservation of an average salary with duration of no less than established by the legislative and other normative actions of the Republic of Tajikistan, for preparation and sitting for examinations and for students of secondary special and higher educational institutions in-service studying for fulfilling of laboratory works, sitting for tests and examinations, preparation and defence of graduation thesis.

Employees obtaining professional education in secondary special and higher educational institutions are provided with no less than one free day in a week at six-day working week for preparation for lessons with preservation of an average salary for the period of ten academic months before starting to accomplish the graduation thesis or sitting for final examinations.

At five-day working week the number of free days changes depending on duration of working shift at preservation of free hours.

Employees obtaining professional education on instruction by correspondence in secondary special and higher educational institutions are provided with privileges on travel expenses to the place of the educational institution's location and back, on the basis of the established legislative and other normative actions of the Republic of Tajikistan.

## **CHAPTER 15. INDIVIDUAL LABOUR DISPUTE**

### **Article 189. Parties and content of individual labour dispute**

Individual labour disputes – these are unregulated s and discrepancies between the employer and employee on the issues of application of legislative and other normative actions on labour of the Republic of Tajikistan and working conditions provided by labour agreement (contract) and collective agreement and contracts.

### **Article 190. Bodies considering the individual labour disputes**

Individual labour disputes are considered by the court. Prejudicial order of consideration of individual labour disputes in enterprises can be established by agreements and collective contracts.

### **Article 191. Prejudicial order of individual labour disputes' considerations**

Prejudicial order of individual labour disputes' consideration in enterprises can be provided by agreements and collective contracts, commissions on labour disputes created on a par with employer and agencies representing the interests of employees, elected labour collectives or other agencies.

Creation of these commissions is regulated by agreements and collective contracts within preserving for an employer the right of choice of appeal to the commission on labour debates or directly to the court, if the creation of commission on labour debates in an enterprise is not considered by the agreement or collective contract, the occurred individual labour debates in this enterprise are subject to the court's consideration.

### **Article 192. Consideration of individual labour disputes in courts**

Individual labour disputes are considered in courts on application of:

- employee, employer or representatives that defend their interests, when they do not agree with decision of the commission on consideration of individual labour disputes;
- employee, if the commission on individual labour disputes is not created or does not consider his application during the fixed ten-day term;
- public prosecutor, if the decision of commission on individual labour disputes contradicts the legislation or other normative actions and agreements on labour.

Immediately in courts there are settled individual labour disputes:

- on restoring an employee irrespective of the reason of labour agreement's (contract's) discontinuation and position held.

On changing of date and formulation of dismissal's reason; on payment for the time of forced absence or accomplishment of the low paid work; on collection of payment for the time of delay of observing the court's decree about restoring of employee through the employer's default;

- on renegotiation of the urgent labour agreement (contract) for new or indefinite term, if in the law or agreement there is fixed the right of priority for its prolongation;
- on protection of labour's honour, dignity and business reputation of the employee and compensation of a material and moral damage caused to him;
- on compensation of damage caused the employees health damage connected with fulfilment of their labour duties;
- on compensation of material damage caused the property of an enterprise by employee.

Immediately in courts there are also considered individual labour disputes on refusal on giving an employment for:

- persons, who consider themselves to be exposed by discrimination;
- persons invited in the course of transference from another organisation;

- other persons, whom an employer has to negotiate a labour agreement (contract) with, in accordance with the legislation or the agreement on labour;
- persons, on refusal of employer in drawing up the statement on accident or disagreement with its contents.

Other individual labour disputes are also considered by the court in other cases provided by legislation.

### **Article 193. Formation of commission on individual labour disputes**

In cases provided by the collective agreement, the commissions of individual labour disputes in the enterprises are formed from equal quantity of employees' and employers' representatives. Representatives of employees in commission on individual labour disputes are selected by the general meeting (conference) of an enterprise.

Representatives of an employer are appointed by an order of the head of enterprise.

### **Article 194. Competence of commissions on individual labour disputes**

Commission on individual labour disputes is the primary body on consideration of individual labour disputes arising in the enterprises, with the exception of disputes for which there is established another order of their consideration by the present Code and other legislative actions.

In commissions on individual labour disputes of enterprises' subdivisions the individual labour disputes can be considered within the authority of these subdivisions.

The competence and working order of the commission on individual labour disputes, and also appealing to it and terms of disputes considerations are determined by the Condition approved by the Presidium of Supreme Meeting of the Republic of Tajikistan.

### **Article 195. Decision of commission on labour disputes**

Decision of commission on labour disputes is adopted on agreement between the representatives of employer and trade union committee or another representative agency of the employees.

Decision of commission should be reasoned and based on legislative and other normative and legal actions on labour agreement (contract). In decision of commission on financial requirements there should be indicated an exact sum due to employee.

Decision is signed by the chairperson and secretary of the meeting. It has an obligatory force and is not subject to any confirmation.

Copy of commission's decision is handed to an employee, employer and trade union commission or any other representative agency of employees in three-day terms from the day the decision made.

In ten-days the decision of commission can be appealed to court.

### **Article 196. Execution of decision of the commission on individual labour disputes**



Decision of the commission on individual labour disputes is subject to fulfilment by an employer in three days on the expiration of ten days provided for appeal.

In case of non-execution of commission's decision by employer in the fixed term, employee is given a certificate by commission on individual labour disputes that has the force of writ of execution.

On the basis of the certificate given by the commission on individual labour disputes and presented at the latest of three months from the day of its receiving in the court, the officer of the court executes the decision of commission on individual labour disputes compulsory.

In case of employee's absence that is fixed for the term of three months on good reasons, the commission on individual labour disputes that gave this certificate can re-establish this term.

**Article 197. Reinstatement in employment, previous position, previous essential labour conditions. Full material indemnification caused by forced absence, moral indemnification.**

In case of dismissal on illegal ground or with breaching of established scheme of dismissal, or illegal transference to another job the employee should be restore in the previous job and speciality, qualification or position conditional by the labour agreement (contract) in the previous place of work, in the enterprise with preservation of working conditions by the agency considering the labour dispute.

In pronouncing judgement on reinstatement in employment the agency, which is considering the labour dispute makes simultaneously decision on paying to employee the average monthly salary for the full time of the forced absence or the difference in earnings during the below paid work, and also on a possible moral indemnification and additional expenditures connected with appealing of transferring or dismissal.

Instead of reinstatement in employment the agency on consideration of individual labour dispute, with the consent of employee can collect in his favour only the above indicated compensations, material and moral damages in amount of no less than an average monthly salary, changing the formulation of dismissal basis to dismissal on one's own accord.

In case of recognition of formulating the reason of dismissal as a wrong one or not corresponding to the present Code, or another law, the agency considering the individual labour dispute is obliged to change it and indicate in the decision the reason of dismissal exact to proper formulation and with reference to the proper article of the law. If the wrong formulation of dismissal's reason in work-book is an obstacle for employee to sign on for new job, the agency considering the individual labour dispute makes simultaneously decision on paying to employee the average monthly salary for the full time of the forced absence and moral indemnification.

**Article 198. Calculation and collection of an average monthly salary for the period of forced absence**

At calculation of an average salary for the period of forced absence it should be indexed by an agency on consideration of labour dispute in accordance with the law.

At collection of an average monthly salary during the forced absence in case of illegal dismissal, removal from work, wrong formulation of dismissal's reason that hampers to get a job, the paid up financial means in kind of: severance pay, an average monthly salary preserved for the period of placing in a job, allowance for temporary

disability, scholarship in the period of professional training and retraining, and qualification development, payment for implementation of public work, payment for new job, for which the employer joined another enterprise within the term of paid absence.

At illegal refusal on employment, transference, displacement, changing essential working conditions the employee is paid on decision of an agency considering individual labour dispute, difference in salary for the full period of forced absence or carrying out of paid work.

### **Article 199. Statute of limitation**

Employees can appeal to the commission on individual labour disputes in three-month period from the day, when they know or should know about breaching their rights.

For appealing to court there are established the following statute of limitations:

- on disputes for reinstatement in employment – one month from the day of handing the employee the copy of order on dismissal (transfer) or work-book;
- on disputes for compensation by the employees material damage caused to enterprise – one year from they day the employer discovers the caused damage;
- on other individual labour disputes – three years from the day, when the employee knows or should know about breaching of his rights.

Statute of limitations is not applied for:

- requirements on protection of private non-property rights and other non-material welfare, except the cases provided by the law;
- requirements on indemnification caused to employee's life or health. However, requirements presented on expiration of three years from the moment of emerging right on indemnification of such damage are met for the past time, no more than for three years preceding claimant.

At absence of statute of limitations on good reasons the court, commission on individual labour disputes can re-establish the missed term.

### **Article 200. Exemption of employee from judicial expenditures**

At appealing to industrial court the employees are exempted from payment of judicial expenditures to state income.

### **Article 201. Immediate execution of some court's decisions on labour issues**

Decision of court on reinstatement in employment and also on changing of date and formulation of the reason of employee's dismissal is subject to immediate execution.

At delaying of execution of such decision by an employer the court makes determination on paying the employee the average monthly salary or the differences in earnings for the all period of delay. To immediate execution is also subjected the decision of the court on collection of salary but no more than for three months.

Court can convert to immediate execution properly or partially the decisions on other labour issues.

### **Article 202. Meeting the employee's financial requirements**

Well-grounded financial requirements of the employees are met by the agency on consideration of individual labour dispute in total extent.

**Article 2003. Imposition of material responsibility on official guilty in discontinuation of labour agreement (contract) or illegal transference and also the delay of court's decision execution**

In case of causing damage to employer by official connected with payment of salary to employee, who was dismissed illegally, or employee, who was illegally transferred to another work, the court imposes obligation on official to compensate the damage. Such obligation is imposed, if the discontinuation of labour agreement (contract), or transference is made with an evident breach of the law or if an official delays the execution of court's decision on reinstatement in employment. The amount of indemnification can not exceed the three month salary of the official.

**Article 204. Limitation of turning the decision of execution on labour issues**

Turning of execution of the court's decision on labour issue (on reinstatement in employment, meeting of financial requirements) that comes into legal effect, at following disaffirmation of court's decision in the course of inspectorate is allowed only in those cases, when disaffirmed decision was based on provision of misinformation or false documentations by an employee.

**CHAPTER 16.  
COLLECTIVE LABOUR DISPUTES**

**Article 205. Notion of collective labour disputes and order of their execution**

Collective labour disputes – these are unregulated discrepancies between employers (employers' unions) and collective of employees (employees' representatives) on establishment and changing of working conditions in enterprises, signing and implementation of collective agreements and contracts, and also on issues of applying conditions of legislative and other normative and legal actions, collective agreements and contracts.

Order of collective labour disputes solution is regulated by the present Code, law, contracts and collective agreements.

**Article 206. Putting in claims the employees' requirements**

The right of putting in claims have the employees and their representatives. Employees' requirements are put in claims in meetings (conferences) of employees, together with putting in claim requirements the employees appoint their authorised representatives for participating in solution of collective labour dispute. Employees' representatives put in the claims in order established by the charter or decision of employees' meeting (conference), forming representative agency. Requirements are put in claim in written form and sent to employer.

**Article 207. Representatives of employees and employers in collective labour disputes**

The representatives of employees are trade unions' bodies and their unions authorised for representatives in accordance with their charters, other representative agencies organised by meeting (conference) of employees and authorised by them.

The representatives of employers are leaders of enterprises or other authorised in accordance with the enterprise's charter people, authorised bodies of associations or unions of employers.

#### **Article 208. Mediation**

Mediator is selected on parties agreement and provides assistance in conducting negotiations and reaching agreement.

Mediator has the right to get all necessary information and documents, which he thinks are necessary fulfilling his task, from the parties. Mediator has no right to divulge the confidential information, which he received at carrying out his responsibilities.

Procedure of mediation is defined by the parties on agreement with mediator. After an endeavour to reconcile the parties, mediator gives them recommendations on dispute's (conflict's) settlement in written form.

Recommendations take on obligatory character for both parties, unless one of them did not decline the mediator's proposal, or if the parties preliminarily made agreement on their implementation.

#### **Article 209. Labour arbitration**

At non-reaching agreement in conciliatory commission during the ten-day term there is created a labour arbitration by the parties of collective labour dispute (conflict) with collaboration of district's or city's government.

Quantitative and personal composition of labour arbitration on each conflict is determined by the parties. Chairperson of labour arbitration is determined by agreement of parties from the members of this labour arbitration.

The members of labour arbitration can be people's deputies, representatives of trade unions' bodies, agencies on labour and population's employment, specialists-experts and other people,

Collective labour dispute is considered by labour arbitration with obligatory participation of the parties' representatives and if necessary – representatives of other interested agencies.

Labour arbitration should make decision in ten-day term from the day of its creation.

Decisions of labour arbitration are obligatory to be executed, if parties signed preliminarily agreement about this.

Parties and conciliatory agencies have to use all opportunities to eliminate the reasons and conditions that arouse collective labour disputes (conflict).

If the conciliatory commission and labour arbitration can not regulate the parties' discrepancies, the reasons of this are brought to labour collective or trade union's notices. Labour collective or trade union have the right to use to meet in accordance with the article 206 of the present Code the raised requirements and all other provided means by the Law right up to full or partial discontinuation of work (absence from work, non-fulfilment of one's working responsibilities) in enterprises, institutions, organisations – striking.

#### **Article 210. Court consideration of collective disputes**

Collective labour disputes concerning application of legislative and other normative actions on labour (their non-fulfilment or breaching) are subject to court consideration according to statement of representative of one of the parties.

At consideration of statement in courts and executing their decisions there are accepted proper rules and terms established by the present Code for individual labour disputes.

### **Article 211. Striking**

If the conciliating procedures did not bring to solution of collective labour dispute, or employer avoids the conciliating procedures or does not accomplish the agreements reached during the course of dispute's solution, employees have the rights to use other means of dispute's regulation (meetings, demonstrations and other mass moves) right up to application of extreme measures of solution of collective disputes – striking.

Decision on striking is made in meeting (conference) of labour collective or an appropriate employees' representative agency by secrete vote and is accepted, if no less than two third of participators of the collective members' meeting (representative agency of an enterprise's employees) or two third of delegates of the labour collective's representatives conference, in the presence of quorum, equal to more than an half of the labour collective's members (representative agency of an enterprise's employees) in the meeting or two third delegates of a conference.

Striking is headed by one person or group of people authorised by labour collective or a proper representative agency of an enterprise's employees.

Employer should be notified in advance in written form on the beginning of striking and the possibility of its duration of no less than for two weeks.

Limitation of rights on striking is admitted in cases, when it creates a serious threats for life and health of people, the state's security and defensive capacity. Limitation of rights on striking is established by the legislative actions of the Republic of Tajikistan. Establishment of the fact of legality or consideration of striking as an illegal is made by the court.

### **Article 212. Guarantees and compensations for employees at implementation of right on striking**

Participation in striking is voluntarily. No one can be forced to participate or turn down from participating in striking.

Participation of employee in striking (with the exception of cases of participating in illegal striking) can not be considered as breaching of labour discipline or as a basis of termination of labour agreement (contract).

For employees that did not participate in striking but due to it could were not able to fulfil their work, there is preserved a salary in amount of no less than at demurrage not through employees' fault.

At the time of striking for the employees participating in it the salary is not preserved, if something different was not foreseen for dispute's (conflict's) regulation.

Trade union committee or another appropriate representative agency of employees have the right to create striking fund at the expense of voluntary payments and contributions, and also special insurance fund.

**Article 213. Responsibility of employee for breaching legislation on collective labour disputes.**

A person representing an employer, avoiding from participation in conciliating commission or guilty in delaying of execution of conciliation agencies' decision is subjected to penalty in amount of tenfold dimension of minimum salary's amount for each day after expiration of the foreseen term, imposed judicially.

A person representing an employer, guilty in non-fulfilment of responsibilities according to an agreement, reached in the result of conciliation procedures or non-fulfilment of court's decision on collective labour dispute, is subjected to penalty in amount of until hundredfold dimension of the minimum salary imposed judicially.

At requirements of trade union, another employees' representative agency, the economical management body is obliged to take action of influence right up to dismissal from position to managers, through whose faults there occurred collective labour dispute.

**Article 214. Responsibility of employees for illegal striking**

Organisation of striking recognised by the court as an illegal and participation in it is considered as a breach of labour discipline and could entail application of measures of disciplinary punishments, provided by legislation.

Persons, forcing to striking by means of constraints and threatens are account in accordance with the criminal legislation.

Indemnification, caused to an owner at illegal striking, conducted on decision of labour collective, is made from consumption fund of an enterprise judicially.

In case, if an illegal striking was conducted on initiative of trade union, indemnification is made at the expense of its means in amount determined by the court with taking into account the property conditions of trade union.

Persons, representing the parties' interests, breaching the rules provided by the present Code, carry administrative responsibilities according to the legislation , which is currently in force.

**CHAPTER 17.  
SOCIAL INSURANCE**

**Article 215. forms of social insurance**

Social insurance of employees is carried out in two forms: state social insurance and voluntary social insurance.

State social insurance is applied for all people, without exception of people, working on labour agreement (contract). Means of state social insurance are formed at the expense of payments, paid by employers, receipts from state budget and other and other receipts determined by the Law. Employees pay insurance payments in order and amount, determined by the Law.

Voluntary social insurance is implemented through illegal insurance funds, which can create enterprises, collectives of citizens, public unions.

**Article 216. Types of provisions at the account of state social insurance**

Means of state social insurance are spent on allowances (on temporary disability, maternity, funeral, family allowance and also other allowances provided by the laws and normative actions of the Republic of Tajikistan), because of losing supporter, for separate categories of employees – for long service, sanatorium and resorting treatment and organisation of holiday for employees and their families, dietetic nourishment, medical service on insurance policy, other payments sanitary and prophylactic activities, determined by the law of the Republic of Tajikistan. Expenditure of the state social insurance's means for aims that are not provided by the law, are not allowed.

At the presence of debts of an employee on insurance policies, an employee is not deprived of the rights on provision at the expense of means of state social insurance.

In agreements and collective contracts at the expense of an employer's own means and voluntary contributions of employees, there can be provided more higher amount of payments, and also additional social payments.

### **Article 217. Allowance on contemporary disability**

Allowance on contemporary disability is paid at illness, connected with losing of working ability, at necessity of caring of an ill member of family, quarantine and prosthesis.

Employee has the right on allowance, if contemporary disability occurred at the period of working, and also on the way to work or from work, including the day of dismissal.

Allowance on contemporary disability in all cases is paid from the day of losing working ability, by certification of disability, given in established order till its restoration or till the day of disability's determination.

Amount of allowance on contemporary disability makes up from sixty to hundred percent of an average salary. The basis of differentiation of allowance's size on temporary disability is defined by the legislative actions of the Republic of Tajikistan. Allowance on temporary disability in consequence of labour damage and occupational disease and other cases, provided by law, is paid in amount of an average monthly salary.

Allowance on contemporary disability is given until rehabilitation of working capacity, but no more than for four months at continuing illness, and at tuberculosis – no more than for twelve months, after which an employee is sent to medico-labour expert commission for establishment of disability.

The sum of allowance on contemporary disability on the expectation of a month can not be less than the minimum salary amount fixed in the Republic of Tajikistan (article 103 of the present Code).

Rules on provision with allowance on contemporary disability is established by the Law.

### **Article 218. Maternity allowance**

Maternity allowance is paid out in amount of full salary for all period of leave provided for woman in connection with pregnancy and delivery (article 164 of the present Code), irrespective of number of days of leave that come on pre-delivery and after-delivery periods.

### **Article 219. Family allowances**

Family allowances (one-time allowance in connection with childbirth, monthly payment for caring for child till he becomes one and half years old) are paid in order, on conditions and amount, fixed by the Law.

#### **Article 220. Funeral allowance**

Funeral allowance is given in case of death of insurant person, and also in case of death of his family's members, who are dependant on him.

An amount of funeral allowance makes up twenty-fold size of a minimum wage.

Order and conditions of funeral allowance payment are defined by the Government of the Republic of Tajikistan.

#### **Article 221. Unemployment allowance**

Order of unemployment allowance's adding and paying is defined by the Law of the Republic of Tajikistan.

#### **Article 222. Provision of pension**

Order of establishment, prescribing, calculation and payment of all types of pensions is determined by the Law.

#### **Article 223. Sanitary and prophylactic activities at the expense of means of state social insurance**

Expending of state social insurance means on sanitary and restoring treatment, organisation of holidays for employees and their families' members, dietary nourishment and other sanitary and prophylactic activities are determined by the Law. Expenses made for these goals are included in account of insurance payments.

#### **Article 224. Non-state insurance funds**

Non-state insurance funds are functioning independently from the system of state social insurance.

Amount and order of fee payment in non-state insurance funds and carrying out the payment from them is determined by agreements between the representative agencies of these funds and insurers.

### **CHAPTER 18.**

#### **RESPONSIBILITY FOR BREACHING THE LEGISLATION ON LABOUR**

#### **Article 225. Agencies of inspection and control over observance of the legislation on labour**

State inspection and control over observance of the legislation on labour and rules of labour protection are carried out by:

1. Special authorised for that state agencies and inspections that do not depend on employers in their activities;



2. Professional unions, and also including technical and legal labour inspections under their competence.

The Supreme Meeting of the Republic of Tajikistan, Meetings of people's deputies of Gorno-Badakhshan Autonomous Oblast, regions, cities, districts and governments of all levels carry out control over observance of legislation on labour and order, provided by the legislative of the Republic of Tajikistan.

The ministries, state committees and departments carry out intra-departmental control over observance of legislation on labour in relations to their subordinated enterprises. Inspection over exact and uniform implementation of laws on labour within the territory of the Republic of Tajikistan is carried out by the General Public Prosecutor of the Republic of Tajikistan and public prosecutors that are subordinated to him.

#### **Article 226. State inspection on safe implementation of works in industry**

State inspection over observance of rules on safe implementation of work in separate spheres of industry and in other units is carried out (together with technical inspection of trade unions) by the Committee on state inspection over safe implementation of work in industry and mountainous inspection under the Government of the Republic of Tajikistan.

#### **Article 227. Public control over observance of the legislation on labour**

Public control over observance of the legislation on labour and rules of labour protection are carried out by professional unions, and also public inspectors and commissions of an appropriate elective trade union body of an enterprise or another employees' representative agency.

Public sanitarian control is carried out by the public sanitarian inspections in the enterprises.

#### **Article 228. Responsibility for breaching the legislation on labour**

Officials, guilty in breaching of legislation on labour carry the responsibility in order, established by the legislation the Republic of Tajikistan.