

Draft

(November 30, 2006)

The law of the Republic of Kazakhstan “On Equal Rights and Equal Opportunities of Women and Men”

The current law shall regulate public relations in the field of securing state guarantees of equal rights and equal opportunities of women and men, shall stipulate for the procedure of their implementation, shall be directed towards prevention of any forms of gender discrimination as well as establishment of conditions fostering gender equality in all spheres of state and public life.

Chapter 1. General provisions

Clause 1. Basic terms used in the current law

In the current law the following basic terms shall be used:

temporary special measures -- measures directed at acceleration of achievement of actual equality between women and men with the purpose of eliminating and preventing discrimination and disadvantages resulting from existing attitudes, behavior and structures;

gender -- social aspect of relations between women and men which is manifested in all spheres of life and activity;

gender equality -- equal legal status of women and men and equal opportunities for its realization allowing persons, irrespective of gender, to freely use their skills during participation in political, economic, social, public and cultural life;

gender assessment -- analysis of normative legal acts, state strategies and programs, other socially significant documents as well as publications with the objective of evaluating their conformity with the constitutional right of women and men for equality and preventing gender discrimination;
gender discrimination -- any gender based distinction, exception or preference which limits or denies implementation of human rights;

quotas -- level of representation of persons of both genders in political institutes, in the labour market and other spheres of life;

non-paid housework -- a kind of labour activity aimed at satisfying family needs;

equal opportunities -- system of means and terms necessary for achievement of actual gender equality;

sexual harassment -- behavior connected with undesirable actions of sexual nature expressed physically, verbally or otherwise in case such actions being directed at a person in condition of labour, material or other dependence and/or not having opportunity to avoid such undesirable contacts by virtue of professional or other necessity;

authorized body on equality -- state body responsible for carrying out the control over observance of the legislation of the Republic Kazakhstan on equal rights and equal opportunities.

Clause 2. Legislation of the Republic of Kazakhstan on equal rights and equal opportunities of women and men

Legislation of the Republic of Kazakhstan on equal rights and equal opportunities of women and men shall be based on the Constitution of the Republic of Kazakhstan and shall consist of the current law and other normative legal acts.

In case international agreements ratified by the Republic of Kazakhstan establish rules different from these contained hereinafter the international rules shall prevail.

Clause 3. **Gender discrimination**

Women and men shall have equal rights and equal opportunities for their implementation. Any action and/or lack of action, including based on traditions and culture, contradicting the requirements of the current law and preventing implementation of equal rights of women and men shall be deemed discrimination and shall entail liability stipulated for by the laws of the Republic of Kazakhstan. The following shall not be deemed gender discrimination:

- protection of women connected with pregnancy and delivery as well as measures aimed at the protection of motherhood and paternity;
- measures aimed at increasing male life expectancy;
- measures aimed at the protection of women within retirement, criminal, criminal procedural and criminal executive legislation;
- draft for military service of men, including contract-based military service, in cases established by the legislation of the Republic of Kazakhstan;
- hire for work which may be executed only by a person of a given gender;
- temporary special measures.

Clause 4. **Main elements of state policy on securing equal rights and opportunities of women and men**

The main elements of the state policy on securing equal rights and equal opportunities of women and men shall be the following:

- development and improvement of the legislation of the Republic of Kazakhstan on equal rights and equal opportunities of women and men;
- gender assessment of normative legal acts, state and branch specific programs passed by state bodies;
- development, passing and implementation of state target programs directed at the achievement of gender equality of women and men and elimination of gender discrimination;
- mandatory account of gender aspects during the process of budget development;
- stimulating measures aimed at the balanced participation of women and men in occupations with prevailing representation of one of genders;
- education and promotion of the culture of equality of women and men, taking of measures aimed at the protection of society from gender discriminatory information, promotion and propaganda;
- fulfillment of corresponding international obligations.

The state shall guarantee the following:

- financing of programs and activities within the state policy on the equality of women and men from state budget;
- management and control over activities aimed at securing equality of women and men by state bodies;
- judicial and legal protection of citizens in cases of breaching the terms of the current law;
- presentation to the President of the Republic of Kazakhstan by the authorized state body on equality of the annual report on its activities on securing equality of rights and opportunities of women and men.

Chapter 2. Guarantees of gender equality in the spheres of state administration and suffrage

Clause 5. **Guarantees of gender equality in the sphere of state administration**

The state shall guarantee establishment of conditions for equal representation of women and men in legislative, executive and judicial branches of power and other spheres of administration through legal, organizational and other mechanisms.

Clause 6. **Guarantees of equal suffrage**

The state shall promote proportional representation of women and men in elected bodies by way of creating equal opportunities for persons of both genders.

In the candidates lists for any elected office women and men shall be represented equally starting from the first position.

In the candidates lists for any elected office from a political party women and men shall be represented proportionally to their number in a given party. Two successive positions in a party list shall not be taken by persons of same gender.

The control over securing gender equality at the time of executing candidates lists for any elected office shall be carried out by elections commissions.

Clause 7. Guarantees of equal access of women and men to public service

At the time of formation of state bodies there shall be no gender based restrictions.

Heads of state bodies shall be obliged to secure equal access of citizens of both genders to public service according to their experience, skills and professional training.

Staff of central and local bodies (including in executive positions) shall include not less than 30% of persons of one gender.

Quotas shall be arranged as a temporary special measure which may be terminated upon achievement of balanced representation of women and men in central and local bodies.

Competition for vacant positions shall not be announced exclusively among persons of same gender except for cases stipulated for by Clause 3 of the current law.

Infringement upon the terms of the current clause shall entail cancellation of illegal instructions (orders) or results of competition for a given vacant position.

The duty of providing selection commissions with the information on the professional training, education and experience of persons participating in the competition for a given vacancy as well as data on the parity of women and men working at corresponding public positions shall be carried by personnel departments of corresponding state bodies.

Similar account shall be conducted by personnel departments of state bodies while deciding on issue of certification and promotion as well as salary increase of public servants.

Chapter 3. Guarantees of equal rights and equal opportunities in social and economic spheres

Clause 8. Guarantees of equal rights and equal opportunities of women and men in the sphere of labour relations

Women and men shall be guaranteed equal opportunities for implementation of their labour rights, including:

equal opportunities for women and men as to employment and equal access to vacant workplaces; equal opportunities for improvement of professional skill, re-training and promotion.

Refusal of signing an individual labour contract on the basis of gender, family obligations and other circumstances not related to professional skills of a given worker shall be banned.

Employer shall not be entitled to demand representation of documents not stipulated by the labour legislation of the Republic of Kazakhstan. While announcing a vacancy inclusion of requirements and criteria alleging preference on the basis of gender, except for cases stipulated for by Clause 3 of the current Law, shall be prohibited.

In case of an individual labour contract cancellation due to staff reduction employer shall be obliged to take account of the developed quantity parity of women and men in the given organization in order not to allow gender discrimination.

General, branch (tariff), regional and collective bargaining agreements may provide for the following:

measures directed at improving the position of persons with family obligations;

equal conditions during hiring of staff for organizations, structural divisions of organizations which shall, with equal qualifications of workers, foster gender quantity balance.

Terms of general, branch (tariff), regional and collective bargaining agreements limiting equal rights and equal opportunities of women and men in the labour market, as well as other terms preventing equality of women's and men's rights, including these limiting equal rights and equal opportunities of women and men to remuneration, shall be deemed invalid.

Persons believing that they have suffered from labour discrimination shall have the right to apply to the authorized state body on equality.

Employer shall be prohibited from creating obstacles for employee who has directed labour

discrimination complaint to the authorized state body on equality.
During protection of labour rights of a person believing that she/he has suffered from labour discrimination absence of guilt shall be proved by employer.

Clause 9. Guarantees during formation by the employer of personnel policy

Guarantees related to implementation of equal rights and equal opportunities of women and men during formation by the employer of personnel policy shall be regulated by the current law and other normative legal acts of the Republic of Kazakhstan.

Employees of organizations shall have the right to receive information regarding vacant positions. Employer, based on employee's request, shall be obliged to present her/him with a written substantiation of refusal of promotion or directing employee to re-training with the purpose of improving her/his professional skills.

Clause 10. Maintenance of gender equality in the sphere of family relations and child upbringing

Women and men shall be legislatively provided for the opportunity to combine labour activities with child upbringing.

Woman shall have the right to make decisions on motherhood related issues as well as to decide how many children to have and with what intervals.

Any one of parents shall have the right to receive social benefits related to temporal labour incapacity due to child caring.

Any one of parents may have child care leave. The leave may be used completely or partially by one of parents or may be divided between parents at their discretion at any moment before child reaches three (3) years of age.

Clause 11. State guarantees of maintaining gender equality in the sphere of healthcare

The state shall guarantee:

- further improvement of legislation and implementation of measures aimed at ♣ preserving reproductive health of women and men;
- improvement of ♣ legislation in the field of protection of motherhood and childhood;
- priority status of the developments of motherhood and childhood protection ♣ system;
- granting women necessary food during pregnancy and breast feeding; ♣
- formation of legislation and implementation of measures aimed at the ♣ decrease of death rate and reduction of the break between average life expectancy for women and men.

Clause 12. State guarantees of maintaining gender equality in the sphere of education, instruction and culture

The state shall guarantee:

- organization of gender education, including in schools, secondary, ♣ secondary special and higher educational establishments, funding of corresponding study programs;
- free choice by students of subjects, ♣ including disciplines studying of which is usually preferred by one of genders;
- carrying out of gender assessment of textbooks, manuals and study ♣ programs;
- prohibition of requirements alleging advantageous gender status ♣ during application for education;
- introduction of an obligatory gender ♣ related training course for civil servants, staff of law enforcement bodies, judges, and workers of other state funded organizations;
- rising gender ♣ awareness of general public by means of state mass media agencies;
- prohibition of propagation of gender discrimination or information, ♣ including statements humiliating and/or offending one of genders in publications, on TV and on the radio, public broadcasts, other public performances or messages targeting general public.

Clause 13. Obligations of women and men related to non-paid housework

Women and men shall bear equal obligations as to fulfillment of non-paid housework. Non-paid housework may not serve ground for gender discrimination and shall be carried out equally by both women and men.

Clause 14. Prohibition of sexual harassments

Employees and students of educational and instruction establishments shall not be exposed to the threat of sexual harassment.

In case of sexual harassment, imposing pressure or persecuting employees, students or educatees based on the above-stated motives employer, educational or instruction establishment shall be liable in accordance with the laws of the Republic of Kazakhstan.

Chapter 4. Securing guarantees of equal rights and equal opportunities of women and men

Clause 15. Ways of securing equal rights and equal opportunities of women and men

Equality of women and men shall be secured by the following:

legislation of the Republic of Kazakhstan, state policy on achievement of ♣ equality of women and men in all spheres of state and public life;
introduction of temporary special measures, including arrangement of ♣ quotas;
contract-based regulation of social-labour ♣ relations;
measures aimed at supervision, control and monitoring of ♣ observance of the legislation of the Republic of Kazakhstan on equal rights and equal opportunities;
gender assessment of state decisions; ♣
other ways ♣ and methods.

Clause 16. Gender assessment of normative legal acts and state programs

Draft normative legal acts, state concepts, strategies and programs shall be subject to gender assessment by state bodies responsible for their development and shall be presented for additional review to the authorized state body on equality.

Clause 17. Formation of state statistics and monitoring in the sphere of maintaining equality of women and men

Gathering and processing of statistical data shall be conducted separately for women and men. State bodies, political parties and public associations, legal and physical persons carrying out entrepreneurial activities shall present corresponding statistical data to statistical bodies separately for women and men.

Chapter 5. Control and supervision of observance of the legislation of the Republic of Kazakhstan on equal rights and equal opportunities of women and men

Clause 18. Control over observance of the legislation on equal rights and equal opportunities

Control over observance of the legislation of the Republic of Kazakhstan on equal rights and equal opportunities in all spheres of political, social and economic life shall be carried out by the authorized state body on equality.

The authorized state body on equality shall carry out its activities through its territorial departments on equal rights and equal opportunities of women and men.

Local executive bodies, according to the legislation of the Republic of Kazakhstan, shall implement measures necessary for the development and carrying out of local target programs aimed at the protection and implementation of equal rights and equal opportunities of women and men.

Clause 19. Supervision of observance of equal rights and equal opportunities of women and men

Supervision of application of laws and other normative legal acts of the Republic of Kazakhstan aimed at securing equal rights and equal opportunities of women and men shall be done by means stipulated for by the legislation of the Republic of Kazakhstan.

Clause 20. Interaction of state supervision and controlling bodies with non-governmental organizations

Bodies carrying out supervision and control over observance of legislation on equal rights and equal opportunities of women and men in the course of their work shall cooperate with public associations participating in the protection of women's rights and maintenance of gender equality.

Clause 21. Liability for infringement upon legislation on equal rights and equal opportunities of women and men

Persons who have suffered from gender discrimination shall be entitled to compensation of moral damages according to the procedures established by the laws of the Republic of Kazakhstan. Infringement upon legislation on equal rights and equal opportunities of women and men shall lead to liability in accordance with the laws of the Republic of Kazakhstan.

**N.A.Nazarbaev,
President of the Republic of Kazakhstan**

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