

**Kulov O.A.<sup>1</sup>, Syzdykova D.I.<sup>2</sup>, Pernica K.<sup>3</sup>**

<sup>1</sup>PhD doctoral student, Buketov Karaganda State University, Kazakhstan, Karaganda, e-mail: olzhas\_krgd@mail.ru

<sup>2</sup>PhD, Buketov Karaganda State University, Kazakhstan, Karaganda, e-mail: nochochek@mail.ru

<sup>3</sup>PhD doctoral student, University of Economics, Chekh, Prague, e-mail: karel.pernica@vse.cz

**AGENCY LABOR AS A NON-STANDARD  
EMPLOYMENT DEVELOPMENT FACTOR**

Globalization and the post-industrial era require entities to use new methods to reduce production costs. At this stage of development, outsourcing is becoming more and more popular for the workforce dispatching. The advantage of agency work lies in its flexibility. Against the backdrop of the agency work positive aspects, there are difficulties for both employers and workers causing disagreements arising from ineffective relations between market participants due to enforcement (mainly in countries with transition economies) and poor labor relations regulation. These circumstances cause a conflict of interest illustrating social injustice. The purpose of the article is to study the peculiarities of outsourcing in the labor legislation sphere on the developed countries example. To study the legal framework of agency work in Kazakhstan. Identify the problems of the emergence of outsourcing as a type of agency work. This article presents foreign experience in the development of agency labor in Germany, the United States of America, Great Britain and Japan, where a comparative approach has been applied to the study of agency work in developed countries. The issues of agency work formation and regulation are covered in these countries.

The issues of agency work formation in Kazakhstan, in particular, employment agencies, were also studied. The civil law base serves as a foundation for studying agency work, outsourcing in particular. For the convenience of studying the agency work, a comparative approach is used in the agency work sphere, which reflects positive and negative aspects of outsourcing as a kind of agency work. The importance of the article is to systematize the agency work formation issues in Kazakhstan in the legal sphere, where indirect methods of regulation are reflected. The experience of reforming shows that in developed countries, the government should establish more flexible outsourcing rules that can ensure fairness for all players in the agency work market.

**Key words:** Civil Code, outsourcing, outstaffing, personnel leasing, flexible employment, doctrine, private agency, contract work, legal norms, enforcing.

Кулов О.А.<sup>1</sup>, Сыздыкова Д.И.<sup>2</sup>, Перника К.<sup>3</sup>

<sup>1</sup> PhD докторанты, Е.А. Бөкетов атындағы Қарағанды мемлекеттік университеті, Қарағанды қ., e-mail: olzhas\_krgd@mail.ru

<sup>2</sup> PhD, Е.А. Бөкетов атындағы Қарағанды мемлекеттік университеті, Қарағанды қ., e-mail: nochochek@mail.ru

<sup>3</sup> PhD докторанты, Прага экономикалық университеті, Прага қ., e-mail: karel.pernica@vse.cz

**Сырттан тартылған еңбек – бейстандартты жұмыстарды дамыту факторы ретінде**

Жаһандану және постиндустриалды дәуірдің кәсіпорындары өндіріс шығындарын төмендетуге арналған жаңа әдістерді талап етеді. Дамудың осы сатысында аутсорсинг еңбек ресурстарын жөнелту үшін де танымал әрі, тартылған еңбек артықшылығы икемді болып келеді. Борыштың оң аспектілері аясында жұмыс берушілер мен қызметкерлерге қиындықтар туындайды, бұл нарыққа қатысушылардың арасында (әсіресе, өтпелі экономикасы бар елдерде) және еңбек қатынастарының нашар реттелуіне байланысты тиімсіз қатынастардан туындайтын келіспеушіліктерге әкеп соғады. Бұл жағдайлар әлеуметтік әділетсіздікті насихаттайтын қызығушылық тудырады. Мақаланың мақсаты – дамыған елдердің мысалында еңбек заңнамасы саласында аутсорсингтің ерекшеліктерін зерттеу. Қазақстандағы сырттан тартылған жұмыстың құқықтық негіздерін зерделеу. Аутсорсингтің пайда болу проблемаларын несиелік жұмыс түрі

ретінде анықтау. Бұл мақалада дамыған елдерде сырттан тартылған жұмысын зерделеудің салыстырмалы көзқарасы қолданылды. Германия, Америка Құрама Штаттары, Ұлыбритания және Жапония сияқты елдердің несие жұмысын дамытуда мол тәжірибесі бар. Осы елдерде сырттан тартылған жұмысты қалыптастыру және реттеу мәселелері қарастырылады. Қазақстанда қосымша жұмыс, оның ішінде жұмыспен қамту агенттіктерінің қалыптасу мәселесі зерттелді. Қосымша жұмыс, оның ішінде аутсорсингтің негізі азаматтық-құқықтық база болып табылады. Сырттан тартылған жұмысын зерттеуге ыңғайлы болу үшін аутсорсингтің оң және теріс аспектілерін қосымша жұмыс түрі ретінде көрсететін қосымша жұмыс саласында салыстырмалы тәсіл жасалады. Мақаланың маңыздылығы Қазақстандағы сырттан тартылған еңбекті қалыптастыру мәселелерін заңдық салада жүйелеу болып табылады, онда реттеудің жанама әдістері көрсетіледі. Дамыған елдерде реформа жасау тәжірибесі үкімет сырттан тартылған еңбек нарығындағы барлық ойыншылар үшін әділдікті қамтамасыз ететін аутсорсингтің икемді ережелерін белгілеуі тиіс екенін көрсетеді.

**Түйін сөздер:** Азаматтық кодекс, аутсорсинг, аутстаффинг, қызметкерлер лизингі, икемді жұмыс, доктрина, жеке агенттік, шарттық жұмыс, құқықтық нормалар, инфорсмент.

Кулов О.А.<sup>1</sup>, Сыздыкова Д.И.<sup>2</sup>, Перника К.<sup>3</sup>

<sup>1</sup>докторант PhD, Карагандинский государственный университет им. Е.А. Букетова, Казахстан, г. Караганда, e-mail: olzhas\_krgd@mail.ru

<sup>2</sup>PhD, Карагандинский государственный университет им. Е.А. Букетова, г. Караганда, e-mail: nochochek@mail.ru

<sup>3</sup>докторант PhD, Пражский экономический университет, Чешская Республика, г. Прага, e-mail: karel.pernica@vse.cz

### Заемный труд как фактор развития нестандартной занятости

Глобализация и постиндустриальная эпоха требуют от предприятий новых методов снижения издержек производства. На данном этапе развития все более востребованным становится аутсорсинг для диспетчеризации рабочей силы. Преимущество заемного труда заключается в гибкой работе. На фоне положительных сторон заемного труда существуют и трудности как для работодателей, так и для работников, вызывая разногласия, возникающие из-за неэффективных отношений между участниками рынка в силу инфорсмента (в основном в странах с переходной экономики) и плохого регулирования трудовых отношений. Данные обстоятельства вызывают конфликт интересов, освещающих социальную несправедливость. Цель статьи – изучить особенности аутсорсинга в сфере трудового законодательства на примере развитых стран, изучить правовую базу заемного труда в Казахстане, обозначить проблемы становления аутсорсинга как вида заемного труда. В данной статье приведен зарубежный опыт развития заемного труда, в частности Германии, Соединенных Штатов Америки, Англии и Японии, где применен сравнительный подход к изучению заемного труда в развитых странах. В приведенных странах освещены вопросы становления и регулирования заемного труда. Изучены вопросы становления заемного труда в Казахстане, в частности агентств занятости. Базой изучения заемного труда, в частности аутсорсинга, служит гражданско-правовая база. Для удобства изучения заемного труда приведен сравнительный подход в сфере заемного труда, где отражены положительные и отрицательные стороны аутсорсинга как вида заемного труда. Ценность статьи заключается в систематизации проблем становления заемного труда в Казахстане в правовой сфере, где отражены косвенные методы регулирования. Опыт проведения реформ показывает, что в развитых странах правительству следует устанавливать более гибкие правила аутсорсинга, которые могут обеспечить справедливость всем игрокам на заемном рынке труда.

**Ключевые слова:** Гражданский Кодекс, аутсорсинг, аутстаффинг, лизинг персонала, гибкая занятость, доктрина, частное агентство, контрактный труд, правовые нормы, инфорсмент.

### Introduction

For the last three decades, the majority of the developed countries have been using private agencies for providing agency work more often. Types of agency work (outsourcing, outstaffing, personnel leasing) get into various spheres more and more. Considerable use of agency work can

be observed in a services sector, the enterprises specializing in production of goods, IT technology, business projects, etc.

Aside from business structures agency work is even more often highlighted in social services (health care, education), but is also widespread in areas which were traditionally looked through as “essentially governmental”, such as safety, justice

and immigration. These innovations are called “partial privatization”, “outsourcing” or “contract signing”; the last one indicates legal character of relations between the government and private provider.

The outsourcing system is necessary in the business world thanks to its flexibility, this direction allows employers to focus on the main business improvement and appointing auxiliary jobs for outsourcing companies.

The last researches in the sphere of work carried out by the leading scientists show that agency work is an important element in labor market development. There are also negative sides of agency work as this sphere causes social vulnerability.

Considering recent economic development of Kazakhstan, employment problems become an important issue for all labor market players. One of the major legal issues are the obstacles arising in legal issues.

### Materials and methods

In this research, a studying of law precept, a studying of the civil code concerning systems of outsourcing regulation in Kazakhstan will be used.

Comparative approach is applied to agency work studying where law precepts, laws and outsourcing realization at the micro level in four countries (Germany, the United Kingdom, the United States of America and Japan) are studied.

**Literary review.** An era of post-industrial development has provoked activation of development of non-standard forms of employment, forms of agency work in particular.

In the course of the research scientific works of Russian and foreign scientists on problems of loan work have been analyzed: E. Maslova, L. Zaiceva, A. Chukreyev, R. Bogdan, R. Russell, etc.

At the same time, agency work study and offer development on regulation of this phenomenon in Kazakhstan is characterized by features peculiar to the majority of the countries staying at a formation stage. The domestic authors who are engaged in studying of agency work and conducting researches: T.P. Pritvorova, D.E. Bektleyeva, G.Z. Kalitova, I.S. Kenzhetayeva, etc.

### Results and discussion

Globalization of the market forces the enterprises to adapt in fierce competition conditions. These tendencies cause the necessity to do flexible and effective business. One of the methods to decrease costs at the enterprise is to use

“agency work”. In this case, the enterprise reduces costs due to temporary hiring of personnel, which is the effective strategy of survival for competitive advantage in the market.

These innovations in the sphere of employment have begun to form in 1980s by the advanced companies; since then such employment type began to get steady tendency to growth. The following agency work development stage has started in 1990s; this period was noted by an active introduction of such employment forms as outsourcing, outstaffing and personnel leasing. (Flexible staff use, outsourcing, outstaffing, loan work as forms of non-standard (unsustainable) employment and their application in Ukraine. 2009: 23)

Outsourcing as a form of quick delegation or realization of a production part as a process became popular in the beginning of 2000s. In its turn, outsourcing has divided tasks at the enterprises into the main and minor functions.

Respectively, this direction demanded special intermediaries in staff recruitment and this niche in labor market was filled by the private agencies and the companies specializing in outsourcing and outstaffing.

Features of outstaffing and outsourcing are visible in the next aspects.

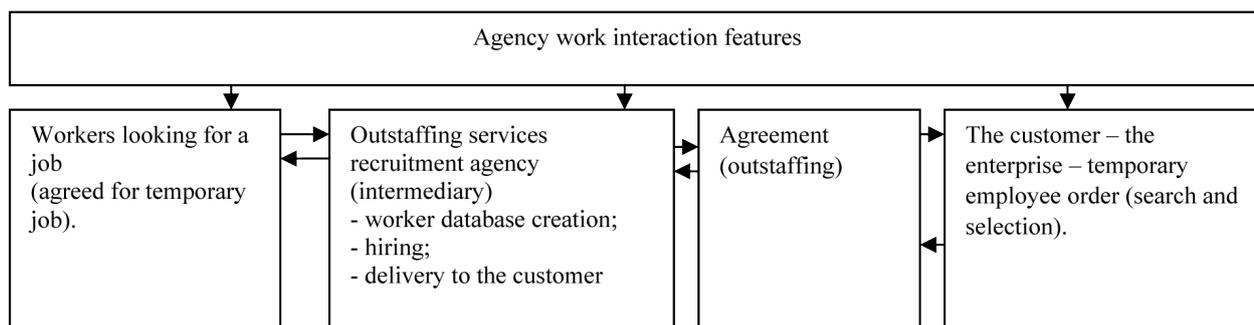
Outstaffing which means “personnel removal out of state borders” (Zaiceva L.2017a: 29).

Outsourcing which is usually understood as transfer by the entity of its separate functions, which aren't main for it, or a number of interconnected functions and production activity types to be performed by another entity (outsourcer), and implementation by the latter of such functions, kinds of activity according to the task of the first entity and to the contract signed by the parties. (Zaiceva L. 2017b: 30).

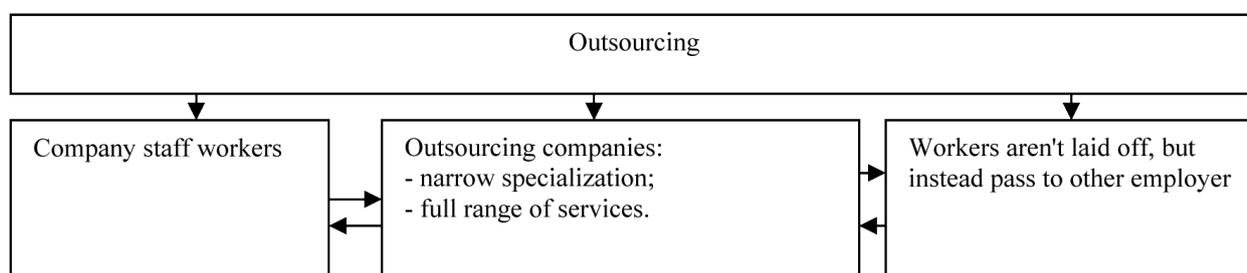
Basis of outsourcing and outstaffing is made of the contractual relations, considering presence in labor market of three parties (recruitment agency or a company, the worker and the third party – the customer). The enterprise acts as the customer, this enterprise carries out working conditions and controls process of the order implementation.

The private agency as the intermediary carries out the activity on the basis of the ILO No. 181 convention concerning private employment agencies. (ILO No. 181 Private Employment Agencies Convention: 2009).

The following is the scheme of the outstaffing and outsourcing work interaction in figures 1 and 2.



**Figure 1** – Outstaffing interaction features Complied by the author basing on a source: (Maslova E. 2017a: 32)



**Figure 2** – Outsourcing interaction features Complied by the author basing on a source: (Maslova E. 2017b: 32)

According to the figures 1 and 2, the customer – the enterprise carries out the order proceeding from enterprise requirements for a certain term. These specifics of interaction allow reducing costs at the expense of the conclusion of the temporary labor relations with the involved employees.

In our opinion, the outsourcing hiring contract form is the most protected in agency work market from the social vulnerability point of view. Due to this fact, let us consider this employment form in more detail.

There are two types of outsourcing companies: highly specialized and with full range of services. The first type is met more often; they offer services of specialists in one-two adjacent types of works. The versatile outsourcing agencies offer services of specialists in a wide range of types of works.

Foreign experience shows that India leads in this service development in modern economy, which gains more than 50% of world income from outsourcing. (The richest. Top 10 Outsourcing Companies in India. 2016: 23).

The second place in this list is taken by China numbering more than 1,3 billion consumers in the market. Such countries as Malaysia, Brazil, Indonesia, Thailand and Philippines compete among themselves in the outsourcing market for the last

several years, having small percentage difference in the gained income (Kearney A. 2017: 14).

Let us give data on some countries' experience, for the comparative analysis in the sphere of legal support using agency work.

Outsourcing in Germany is known under the term “labor force leasing” (Germany Employee Leasing – Law from 1972). According to article 1 of the Law on labor leasing in Germany, labor force leasing is defined as a condition under which the agency company, which in this direction is the outsourcing company, rents the employees for the user. The leading scientists in the sphere of agency work A. Kirchner, A Kearney. and Magotsch (2010) explain that the first law on outsourcing in Germany has been created in 1972.

In Germany, there are two types of outsourcing: Werktrag (obligation) and ArbetachmerIsberlassung. Outsourcing in Germany is usually carried out in every sphere of economy, except for construction trade, and it can be made only within 18 months.

There are also laws on protection of workers' basic rights, i.e. with a social guarantee, salary, anti-discrimination, there are opportunities for the worker development, etc.

There are concrete laws regulating the main worker protection, such as the law on protection,

the Law on protection against unfair dismissal, the Law on protection of motherhood, the Federal law on education grants and the Law on the incomplete and fixed employment term. Thus, Germany has a number of provisions describing details of concrete and flexible forms of working conditions for workers and employers.

The United Kingdom as the country adhering to the system of general law does not regulate outsourcing in particular. Outsourcing has a number of rules and laws regulated on the statute level and the law on employment. Here is a number of the provisions governing the outsourcing: Regulation No. 93 – Terms and Conditions of Employment (governed by The Agency Workers Regulations) and the Employment Act 1999.

Outsourcing regulation in the United Kingdom is carried out by application of The European Communities Act 1972, which is founded on the Contract on accession of the United Kingdom to the European Economic Community. All contracts have to follow the arrangement principles, the rights and duties. The third party can work as the right or the obligation receiving as the outsourcing agent or the work organization (The European Communities Act – 1972).

Outsourcing: workers have protection when the outsourcing company unfairly dismisses the worker. Outsourcing workers are protected from their pension insurance point of view; if they don't receive this insurance, they can demand in case the employer has broken the case of dismissal or breach of contract (The Agency Workers Regulations 2010). Unlike the United Kingdom.

The USA according to the federal act claims that in the Labor Act three federal acts prevail: The National Labor Relations Act (NLRA), the section VII of the Civil Rights Act and a Fair Labor Standards Act (FLSA) explain the main objective of the Labor Act in the United States, which is to achieve equality in terms of negotiation power between workers and employers. (Bogdan R. 1975: 41).

There are two types of outsourcing contractors in the United States: employees and independent contractors. Both of them are called outsourcing workers, but independent contractors can work in more than one company, have flexible working hours and use own powers for making decisions on work. These privileges are not intended for contractors. (Skonberg J. 2001a: 42)

On the other hand, employee contracts offer health insurance, and all expenses are covered by the company. However, FLSA law protects both contracts. It shows that outsourcing in the United

States is also flexible both for workers, and for employers. Besides, it offers students an opportunity to work and receive an hourly wage (Skonberg J. 2001b: 44).

The fourth comparative country in this research is Japan. The Constitution of Japan is a basis for the country's labor legislation. The law regulating work is the Law No. 59/1947 concerning employment.

Outsourcings contractors are known in Japan as dispatchers. The law consists of two categories based on the labor relations (employment contracts): standard employment (permanent workers) and non-standard employment (changeable workers). Moreover, non-standard employment is divided into three categories: temporary or contract work (specified working hours), part-time and indirect employment similar for dispatchers.

Types of works that can be outsourced in Japan are wider to about 26 types more directions, but since working scheduling has given changes, the Law has been changed in 2012: types in agency work, in this case aren't limited anymore.

Given countries first of all have concrete and flexible rules concerning outsourcing which can be a reference point for Kazakhstan for creation of more flexible rules for the system of outsourcing regulation, including flexible employment contracts.

Let us consider agency work development in Kazakhstan. In Kazakhstan, there are no legislatively established personnel outsourcing and outstaffing concepts, but rules of workers assignment are introduced. The conditions of application of workers assignment institute in the new labor code concern temporary exchange of affiliated companies personnel. Therefore, outsourcing and outstaffing are not fully legalized. (Pritvorova T. 2017: 127).

It is possible to note that according to Art. 380 of the Civil Code of RK, item 2. "The parties can sign the contract, both provided and not provided by the legislation". Thus, applying elements of various contracts, such as property rent, rendering services, the conclusion of an outsourcing agreement is possible using the norm of Art. 381 of CC of RK (Grajdanskii kodeks Respubliki Kazakhstan).

The most popular services among the Kazakhstan companies are personnel services, payroll calculation services and accounting. Each year, the market becomes more and more competitive, and those providers who could propose the most convenient and effective outsourcing solutions to the clients win. (Kalitova G. 2014a: 83).

In Kazakhstan, the most popular outsourced functions are HR, IT and accounting. (Kalitova G. 2014b: 84).

Meanwhile, there is no basic value to which contract will be signed within outsourcing realization as a way of the business organization. Some companies are more comfortable with having the unified Outsourcing Contract, which will carry elements of a mixed contract, the others prefer the conclusion of separate obligation types. The principle of an economic contents priority over a legal form is obvious to see. (Kenzhetayeva I. 2014: 89).

Legal aspects of the Kazakhstan legislation for outsourcing process transfer. Very important aspect of the outsourcing relations is registration of labor relations with the personnel, which was earlier engaged in service of process “within” the company, which has made the decision on function allocation.

The labor legislation of Kazakhstan accurately describes the list of the bases on which it is possible to terminate the relations with the worker. Out of 9 items of cancellation according to the law, within the conclusion of outsourcing projects the basis for

the termination of labor relations with workers is the “at the initiative of the employer item. (Trudovoi kodeks Respubliki Kazahstan).

Inseparable part of the contractual relations between the Customer and the Performer of all outsourcing projects is the ServiceLevelAgreement, SLA). Agreement is developed for the purpose of controlling the level of services and relations formalization between the Parties of the outsourcing relations so that to make them the most convenient and clear, and also to provide joint achievement of the goals and objectives. In our opinion, this document is basic in structure of project contracts. It allows keeping the analysis of failures on process, as well as fixing the most successful decisions.

In the course of implementation and use of outsourcing services, there can be both positive and negative sides of agency work involvement consisting of the following:

**Table 1** – Positive and negative sides of outsourcing

Outsourcing	
Negative sides	Positive sides
existence of confidential information leakage probability	Cost reduction: workplace charges, training costs
possible decline in own personnel labor productivity (motivation loss)	Redistribution of the entity resources earlier involved in minor functions; concentration on core business
Excessive interest in outsourcing forms customer entity's dependence on external performers, which can be critical	Time saving, increase in entity's flexibility in case of a market change
	Improvement of quality the entity's activity results in the form of goods and services (workers specialization)
Compiled by the author basing on a source: (Pritvorova T. 2017: 129).	

Let us give the legislative parties of private agency development in Kazakhstan where we will reflect agency work activity.

According to article 31 of the law RK “On employment of the population the private employment agency has the right:

to advise the addressed persons concerning the labor legislation of the Republic of Kazakhstan and the legislation of the Republic of Kazakhstan on employment of the population;

to provide information on a possibility of employment and service in labor mediation;

to form information on employers offering jobs and persons looking for a job;

to carry out selection of workers considering their compliance to employer's qualification requirements;

to recruit workers for employment from one country to another in the presence of international treaties;

to organize vocational training and retraining of the addressing persons with the subsequent employment;

to process allowing documents for export in case of employment of persons abroad;

to participate in competitions in carrying out social vocational guidance of the persons directed by job centers;

to obtain free labor market information from job centers;

to interact with public authorities, job centers, employers concerning employment, creation of jobs, vocational education. (Civil Code of the Republic of Kazakhstan: 2007)

According to it, in the list of the rights of the private employment agencies, there is no right to conclude employment contracts with potential clients, whom they could offer to labor demand subjects.

### Conclusion

According to the research, it is possible to draw the following conclusions of agency work application, outsourcing in particular:

Outsourcing in Kazakhstan is carried out by the indirect legal legislation:

by application of workers assignment institute in the new labor code concerning temporary exchange of affiliated companies personnel;

by conclusion of agreement from Art. 380 of the Civil Code of RK, item 2. “The parties can sign the contract, both provided and not provided by the legislation”. Therefore, applying elements of various contracts, such as property rent, services rendering, the conclusion of an outsourcing agreement is possible using the norm of Art. 381 of the CC of the RK;

within outsourcing projects, the basis for the termination of labor relations with workers is the “at the initiative of the employer” item;

In Kazakhstan the lack of the legislative base for the implementation of outsourcing through the

private agencies is observed. In article 31 of the law of the RK “On employment of the population”, the private agency has no right to conclude employment contracts with potential clients, whom they could offer to labor demand subjects.

This legislative base concerning outsourcing does not fully reflect agency work development and is an indirect method of influence. Respectively, the social sides of the agreement are not reflected in the legislative base, thus, the worker is socially vulnerable.

Discussing positive and negative sides of new employment forms, the practical reality shows that when using such forms, difficulties arise from at least three sides:

– from tax authorities which often treat this form as “the tax avoidance scheme”;

– from the side of “irresponsible” personnel whose interests at large enterprises are represented by the labor unions and which refuse to form labor relations “no one knows with whom”;

– from the legislation which hasn’t adjusted this procedure so far.

In Kazakhstan, outsourcing just begins to gather a tendency to growth. Entities use work force outsourcing, personnel leasing and in the near future, the demand for the outsourcing companies will only increase.

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