

Employment agreement vs Service contract. Before you sign the contract, take your time and read this

It is tough time to find a job, especially during pandemic, however, finally you have found your dream job, successfully passed obstacles of applying, interviewing and getting your new position in your carrier path. Now it is time to get signed a contract. Signing a contract, particularly an employment agreement, offers you security and benefits during bad times and, of course, during pandemic. Generally, the employment contract is signed between the employee and the employer in order to establish labour relations between the parties. This notwithstanding, some employers prefer to get signed a service contract which also regulates relations between the parties, but it mostly relates to civil relations. That is why, it is extremely crucial to examine the main aspects of the contract closely before signing.

As your personnel legal consultant, I would like to provide you with some further tips on difference between employment agreement and service contract:

Employment agreement	Service Contract
Applicable law	
<ul style="list-style-type: none"> ✓ Employment agreement is regulated under the Labor Code and labor legislation of the Republic of Azerbaijan. ✓ In the employment agreement includes the concepts and terms which are defined by the Labor Code such as employee, employer, labor function, salary, leave, place of work, working conditions, etc. 	<ul style="list-style-type: none"> ✓ Service contracts are regulated under the Civil Code and civil legislation of the Republic of Azerbaijan. ✓ In the service contract, the definitions and terms which defined by the Civil Code are used such as the client, the contractor, service fee, act of completion, etc.
Parties to the Contracts	
<ul style="list-style-type: none"> ✓ Parties to the employment agreement shall be the Employer, from one side, and the Employee, from another side. ✓ The employment agreement shall be bilateral. 	<ul style="list-style-type: none"> ✓ Parties to the service contract, generally, shall be the Client, from one side, and the Contractor, from another side. ✓ The service contract can be bilateral, trilateral and multilateral, depending on the subject of the contract.
Required paperwork while signing a contract	
<ul style="list-style-type: none"> ✓ While signing an employment agreement, the employee shall present the employment record book, identification card and state social insurance certificate (excluding those who start working for the first time). 	<ul style="list-style-type: none"> ✓ While signing service contract, the parties shall present either identification card or TPIN, their bank details, etc. There is no need to show employment record book and make any notes there.
Subject and nature of the contract	
<ul style="list-style-type: none"> ✓ In the employment agreement, the subject of the agreement shall be the employee's labor activity (process) itself. ✓ The employment contract regulates labor relations which defines as labor in the profession or position in which the 	<ul style="list-style-type: none"> ✓ In the service contract, the subject of the contract shall be the result of performed work or service. ✓ The service contract regulates civil rights and obligations occurred on the basis specified by civil law as well as the

<p>employee is hired (appointed), selected, reinstated in the workplace, determined by mutual agreement with the employer in accordance with the obligations under labor legislation, collective agreements and contracts relations based on personal performance of the function with payment of wages, observance of internal disciplinary rules, provision by the employer of working conditions, guarantees and protection of labor of the employee, as well as the principles of Labor Code***</p> <ul style="list-style-type: none"> ✓ The relationship between the employee and the employer is based mostly on the principle of subordination. ✓ The employee's place of work shall be specified in the employment agreement. ✓ The employment agreement usually concludes for fix term with possible extension of the employment agreement based on the consent of the parties or infinite period. ✓ In the employment agreement, the employee is hired for specific position (profession) specified in the staff schedule and being integral part of the production activity. ✓ In the employment contract, the salary which shall not be less than the minimum level established by law is paid by the employer for the performed work to the employee. ✓ In employment contracts, the employee shall perform their labor function and other instructions received from the employer in connection with the labor function personally. 	<p>actions of natural persons and legal entities not specified by law which, by virtue of the principles of civil law, give rise to civil rights and obligations, as well as contracts and other transactions specified by law as well as contracts and other transactions which do not contradict the legislation **</p> <ul style="list-style-type: none"> ✓ In the service contracts, relationship between the parties is based on the principle of equality and obligations of the parties defined by the contract. ✓ Place of work may not be specified in the service contract. ✓ The service contract is usually concluded for fixed term or until execution of the performed work or service. The term of service contract may be extended only by mutual consent of the parties on the basis of the terms provided by the contract. ✓ In the service contract, the Contractor is not employed in any position (profession) according to the staff schedule, the Contractor's activity is usually one-time or periodic (on the temporary basis). ✓ In service contracts, the payment which is considered as service fee for rendered work (services) is usually made on the basis of an advance payment and act of completion for work and services which have been performed. ✓ In service contract, the Contractor shall execute the work or service which particularly specified in the contract and also, may assign execution of work (services) on a third party on the basis of the terms specified in the contract.
Occupational safety and social protection	
<ul style="list-style-type: none"> ✓ In accordance with the provisions of the employment agreement, the employer shall meet sanitary and hygiene standards in order to protect the 	<ul style="list-style-type: none"> ✓ In service contract, there is no obligation regarding compliance with occupational safety rules and norms, compulsory insurance, state social

<p>employee's health and his/her occupational safety; comply with occupational safety rules and norms determined by labor legislation; provide employees with compulsory insurance against the professional incapacity due to industrial accidents and occupational diseases, compulsory state social insurance, pension, social security, benefits, and social insurance rights, compulsory medical insurance.</p>	<p>insurance, etc. The contractor shall do it himself/herself or these obligations must be regulated by additional provisions of the contract.</p>
Responsibility and fines	
<ul style="list-style-type: none"> ✓ In the employment agreement, the employee is subject to disciplinary action for violating the rules of internal discipline and working hours. ✓ The employee and the employer shall be liable for the caused damage in the cases and in the amount provided by the labor legislation. In case of failure to sign full material liability agreement under the employment agreement, the employee shall be liable for the caused damage to the employer in the amount of their average salary. 	<ul style="list-style-type: none"> ✓ In the service contract, the contractor is not subject to disciplinary action by the other party, and is free to operate. ✓ In the service contract, both parties are responsible for the full compensation of the caused damages. However, on the basis of the terms specified in the contract, the contractor shall be liable in full for the caused damage.
Taxes	
<ul style="list-style-type: none"> ✓ In the employment agreement, the employer shall pay social insurance premiums for the employee and income tax for an employee in the amounts specified in the Tax Code of the Azerbaijan Republic. 	<ul style="list-style-type: none"> ✓ In service contract, the Contractor usually shall pay all applicable taxes (income tax of natural person or simplified tax) specified in the Tax Code of the Republic of Azerbaijan.

Taking into consideration the last amendments to the Labor Code, the relations arising between the parties are considered labor relations in the below mentioned cases and they are not allowed to be formalized by service contracts and the following changes shall be made:

- the content of the contract is in accordance with Part 2 of Article 43 of Labour Code, and its form corresponds to the form established by Part 2 of Article 44 of Labour Code;
- in accordance with Article 48 of Labour Code, when an employment record book is submitted for registration of relations between the parties and making relevant notes;
- if the relationship between the parties arises in connection with the admission (appointment) to the relevant profession or position, including paid election or appointment, as well as holding a position on a competitive basis, employment on a quota basis, reinstatement by a court decision;

- if the relationship between the parties arises in connection with the performance of work (services) related to the main field of activity of the employer;
- if the relationship between the parties arises in connection with the performance of works (services) on a substitute or temporary replacement basis;
- if the extension of the contract is regulated in accordance with Article 73 of Labour Code in case the work (service) is of a temporary nature due to the conditions of performance;
- if the composition of the remuneration paid for the work (service) performed consists of the monthly tariff (position) salary, supplement and bonus specified in part 3 of Article 157 of Labour Code;
- if the contract provides for the regulation of issues provided for in Articles 10, 77, 112, 179 and 186 of Labour Code;
- A written employment contract shall be concluded from the date of discovery of one of the cases mentioned above.

To sum up the above mentioned, while being euphoric about getting your dream job, please read the offered employment agreement or service contract which later makes it possible to avoid you from unpleasant exceptions with unnecessary discussions for both sides.

*** According to the Law of the Republic of Azerbaijan "On Amendments to the Civil Code of the Republic of Azerbaijan" dated February 23, 2021 (published at 03 April, 2021).*

**** According to the Law of the Republic of Azerbaijan "On Amendments to the Labor Code of the Republic of Azerbaijan" dated April 2, 2021 (published at 07 May, 2021).*

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