

GROUNDINGS AND PROCEDURE FOR SUSPENDING AN EMPLOYEE FROM WORK: NATIONAL AND COMPARATIVE PERSPECTIVES

Elmurodov Xusan Elmurodovich

Independent Researcher at

Tashkent State University of Law

E-mail: Husan.elmurodov@mail.ru

<https://doi.org/10.5281/zenodo.21523679>

Abstract. This article presents a comparative legal analysis of the substantive grounds for suspending an employee from work and the procedures for imposing and formalising such a suspension under the labour legislation of Uzbekistan and selected foreign jurisdictions. The national rules governing the grounds and procedures for suspension are compared with the legislation of post-Soviet states and selected Western countries. The article also examines the theories, models, concepts and principles underpinning the regulation of employee suspension in various jurisdictions.

Keywords: employee, suspension from work, internal investigation, procedural safeguards, post-Soviet states, developed countries, digital platform, algorithmic management, human oversight.

Suspension from work is one of the mechanisms by which employees may be deprived of the opportunity to exercise their right to work. The global legal landscape governing employee suspension has developed in a distinctive manner. Various theories (Neutral Measure Theory, Preventive Intervention Theory, Responsibility Allocation Theory and Administrative-Preventive Theory), doctrines (Disciplinary Doctrine, Precautionary Suspension, Doctrine of Suspension of the Employment Contract and the Employer's Managerial Prerogative), models (Obstacle-Removal Suspension Model, Paid Standby Suspension Model and Hybrid Suspension Model), concepts (Employment Status Preservation Concept, Administrative Necessity Concept and Concept of Temporary Modification of the Employment Contract), and principles (Principle of Proportionality and Principle of Notice and a Reasoned Decision) have been developed to explain the legal nature of suspension from work.

Suspension of an employee is lawful only where specific grounds expressly provided by law exist. Unlike Western countries, post-Soviet states establish the grounds for suspension directly by statute. Uzbekistan follows this approach, and its Labour Code contains an exhaustive list of the grounds for suspension. Article 151 of the Labour Code of the Republic of Uzbekistan sets out nine such grounds. The list may not be extended either by agreement of the parties or unilaterally.



In all post-Soviet states except Moldova and Georgia, suspension from work has been retained as an independent legal concept and mechanism. The grounds for and procedure governing suspension are also regulated in broadly similar ways. In Moldova and Georgia, however, labour legislation has been restructured in line with the approach of developed Western countries, and suspension from work has been recast as suspension of the employment contract.

Article 76 of the Labour Code of the Russian Federation sets out a considerably broader list of grounds, including grounds not found in Uzbekistan, namely failure to undergo a mandatory psychiatric examination and the suspension, for up to two months, of a special right, such as a licence, the right to drive a vehicle or the right to carry a weapon[1]. According to the legal scholar E. Yu. Agafonova, this list is not exhaustive, and federal legislation may provide for additional grounds[2].

Article 49 of the Labour Code of the Republic of Belarus includes a distinctive ground not found in other jurisdictions, namely theft or misappropriation of the employer's property[3]. As noted in the article-by-article commentary on the Belarusian Code, this extension is intended to ensure that suspension serves not only an occupational safety and health function but also the function of safeguarding property[4].

Article 48 of the Labour Code of the Republic of Kazakhstan contains an even broader list, including deprivation of a particular right or permit and failure to safeguard property[5]. The Labour Code of Kyrgyzstan permits suspension on the basis of the findings of an internal investigation and where an employee is caught committing theft[6]. By contrast, the labour codes of Tajikistan[7] and Turkmenistan contain comparatively short lists, limited primarily to requirements imposed by state authorities, intoxication, occupational safety and health violations, and failure to undergo a mandatory medical examination[8].

The comparative analysis leads to two important conclusions. First, most Commonwealth of Independent States (CIS) member states provide for additional grounds that are absent from Uzbek legislation, including the temporary suspension of a special right.

Article 151 of the Labour Code of the Republic of Uzbekistan does not recognise the temporary suspension of a special right as a ground for suspension from work. At the same time, paragraph 5 of part one of Article 168 of the new Labour Code recognises "the emergence of circumstances that, in accordance with the law, prevent the continuation of employment relations" as a ground for terminating an employment contract owing to circumstances beyond the parties'



control. These circumstances include revocation of the right to access state secrets and loss of a permit or licence required to perform particular work[9]. Thus, national legislation provides for termination of the employment contract, rather than a temporary measure, as the legal consequence of losing a special right. In our view, where a special right is suspended only for a short period, temporary suspension from work or transfer to another position with the employee's written consent would better preserve the stability of employment relations than immediate termination.

Second, the open-ended nature of the list of grounds deserves particular attention. Article 76 of the Russian Labour Code also refers to "other cases provided for by other normative legal acts". As the legal scholar S.V. Kolobova observes, this approach allows any body empowered to adopt labour law rules to supplement the list of grounds. However, under part three of Article 55 of the Russian Constitution, individual and civil rights and freedoms may be restricted only by federal law. Article 76 should therefore contain an exhaustive list[10]. The legal scholar Ya.A. Pushkar partly supports this position, arguing that restrictions may not be established by "other normative legal acts" and proposing that the provision be amended to refer to "other cases provided for by federal laws"[11]. This approach is also methodologically significant for Uzbek law. Under part three of Article 21 of the Constitution of the Republic of Uzbekistan, individual rights and freedoms may be restricted only in accordance with the law and only to the extent necessary to protect the constitutional order, public health, public morality and the rights and freedoms of others, and to ensure public safety and public order[12]. Accordingly, the list of grounds for suspension may be expanded only by statute, confirming the constitutional basis of the model adopted by Uzbekistan.

In developed countries, the grounds for suspension are generally determined by the employment contract and the employer's internal policies rather than by statute. The corresponding rights and obligations arise from those instruments.

In the United States, suspension may be imposed on several grounds, including disciplinary misconduct or breach of company policy, administrative suspension pending an investigation, the need to ensure workplace safety, and a legal requirement to suspend an employee who has been charged with a criminal offence[13]. American practice recognises three principal forms of suspension. The first is suspension with pay, usually imposed while a complaint against an employee or alleged misconduct is investigated. This prevents an employee from

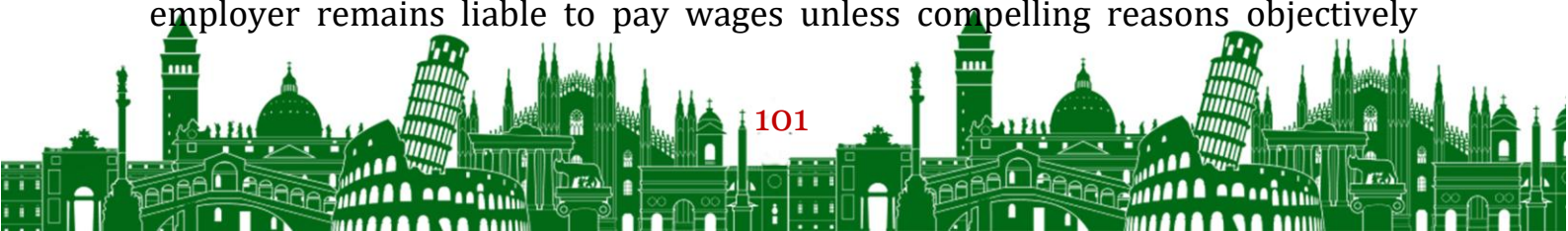


being punished without justification before fault has been established. The second is suspension without pay, which constitutes a disciplinary sanction and may last from one day to several weeks. The third is administrative suspension, which is used primarily in the public sector, municipal bodies, the police and educational institutions to safeguard both the impartiality of an investigation and workplace safety.

In the United Kingdom, suspension is recognised on several grounds. An employee accused of unlawful conduct, including theft, fraud, extortion or violence, may be suspended immediately to protect other employees and the working environment. Suspension during an inquiry or investigation helps prevent tampering with evidence, intimidation of witnesses and obstruction of the investigation. Threats to workplace safety, substance misuse, and repeated or serious breaches of company policy may also constitute grounds for suspension[14]. Suspension is not, in itself, an independent ground for terminating an employment contract and remains subject to the fairness requirements of the Employment Rights Act 1996[15].

The experience of Japan is of particular scholarly interest. According to Professor K. Sugeno, disciplinary suspension prohibits an employee from performing duties under the employment contract for a specified period as a sanction for a breach of workplace discipline. It is sometimes referred to as disciplinary suspension or home standby. No wages are paid during the suspension period, which is generally not counted towards length of service. In practice, suspension often lasts for one week or up to fifteen days. Although legislation does not directly regulate this issue, the principle of “public order and morals” under Article 90 of the Civil Code may limit excessively long suspensions. Because disciplinary suspension may last from one to three months, the proportionality of the sanction to the misconduct and the sufficiency of the grounds for suspension are subject to strict legal scrutiny.

Another important feature of Japanese doctrine is the distinction between suspension as a disciplinary sanction and precautionary suspension pending a decision on dismissal or disciplinary dismissal. A precautionary suspension is imposed by an employer’s managerial order. Because an employee generally has no right to insist on being provided with work, an employer may issue such an order even without an express basis in the internal labour regulations, provided that wages continue to be paid. If wages are not paid during the suspension period, the general principle in Article 536(2) of the Civil Code provides that the employer remains liable to pay wages unless compelling reasons objectively



make it impossible to allow the employee to work, such as a risk of repeated misconduct[16]. This approach appropriately links entitlement to wages to the legal basis for suspension and the existence of fault on the part of the employee.

A new digital form of suspension from work is now emerging in foreign practice. With the introduction of algorithmic management on digital labour platforms, a worker's account may be restricted, suspended or deactivated on the basis of an automated decision. As the legal scholars A. Aloisi and N. Potocka-Sionek note, automatic suspension or deactivation of an account deprives a worker of the opportunity to earn income. Trade unions have therefore demanded greater algorithmic transparency and a complete prohibition on automated account suspension and deactivation[17]. In substance, this is a new technological form of the employer's traditional organisational authority. It prevents the employee from performing work duties without being subject to the grounds and procedures prescribed by labour legislation.

According to Professor J. Adams-Prassl of the University of Oxford, the Platform-to-Business Regulation (EU) 2019/1150 requires online platforms to state the reasons for decisions to restrict, suspend or terminate the provision of their services and, where the relationship is terminated entirely, to give at least thirty days' prior notice. The Transparent and Predictable Working Conditions Directive likewise requires employees to be informed of the procedure and notice periods applicable to termination of the employment relationship. Under Article 22 of the General Data Protection Regulation, a person has the right not to be subject to a decision based solely on automated processing that produces legal effects concerning that person or similarly significantly affects that person. Any human involvement in such a decision must be meaningful[18].

V. De Stefano uses the "human-in-command" approach to argue that disciplinary measures based on algorithmic data must be subject to human review[19]. The legal scholars V. De Stefano and S. Taes emphasise that collective bargaining is an effective means of ex ante control for reducing the risks of algorithmic management[20]. The application of these safeguards, however, depends on the worker's legal status. According to M.A. Cherry and A. Aloisi, employee status is a fundamental precondition for protection under labour law[21]. Consequently, where the account of a platform participant engaged under a civil-law contract is blocked, that person may fall outside the suspension safeguards established by Articles 151–154 of the Labour Code. This demonstrates the need for legislation to define clearly the status of digital platform workers and the procedure for human review of algorithmic decisions.



In our view, this experience should be incorporated into national legislation in two respects. First, the law should expressly require any decision to suspend an employee to be made and signed by an authorised official rather than by an automated system. Second, an employer's actions, such as withholding work assignments, restricting access to information systems or blocking an account, should be classified as suspension from work whenever they prevent an employee from performing work duties. Such actions should therefore be subject to the grounds and procedures established by Articles 151–154 of the Labour Code. Otherwise, digital restrictions may become a concealed form of unlawful deprivation of the right to work.

Because suspension gives rise to rights, obligations and legal consequences for the parties, the employer must issue a formal order. The order must state the grounds set out in parts two and three of Article 151 of the Labour Code. It must be presented to the employee for acknowledgment by signature. If the employee refuses to review or sign the order, a formal written record must be prepared in the presence of witnesses. Where an internal investigation is being conducted, suspension must likewise be formalised by an employer's order and presented to the employee for acknowledgment by signature. If the employee refuses to review or sign it, the members of the commission must prepare a corresponding formal record in accordance with Article 309 of the Labour Code[22].

The procedural aspect of suspension has been examined extensively in foreign legal scholarship. According to M. Conradie and J. Deacon, a suspension procedure should provide the employee with advance notice, a sufficiently detailed statement of the reasons for suspension, a genuine opportunity to respond, and information about the terms of the suspension and the anticipated date or conditions for lifting it[23]. This approach reflects the procedural nature of suspension, since its fairness depends not only on the existence of a substantive ground but also on the provision of adequate procedural safeguards.

As the British researcher A. Cooper and her co-authors observe, an investigation that is not conducted according to a clear procedure adversely affects both the fairness of the process and the employee's rights and interests[24]. In this context, the rule allowing an employee to request a copy of the order and requiring that copy to be provided within three days, including the date of the request, should be viewed not merely as a formal requirement but as a practical guarantee of procedural fairness. Where objective circumstances make it impossible to present the order to the employee in person, including where the employee requires an additional medical examination or treatment, the employer



must send a copy by registered post with acknowledgment of receipt within three working days from the date on which the order was issued.

The procedural safeguards governing suspension in the public sector deserve particular attention. In the United States, suspension without pay engages constitutional due-process rights. In *Cleveland Board of Education v. Loudermill*, the US Supreme Court held that, before dismissal, a public employee must be informed of the charges and given an opportunity to respond[25]. In *Gilbert v. Homar*, the Court recognised that a serious charge may justify temporary suspension without a prior hearing, provided that an appropriate hearing is subsequently held[26]. Under Article 49 of the Law “On the State Civil Service”, where an internal investigation is necessary, the head of a state body may temporarily suspend a civil servant with continued payment of average earnings. The investigation may not exceed fifteen working days but may be extended by up to fifteen additional working days on the basis of a reasoned proposal from the commission[27]. This provision, however, does not require advance notice or an opportunity for the employee to provide an explanation.

As a rule, no wages are paid during a period of suspension, information about the suspension is not entered in the employment record book, and the employee retains the right to take up secondary employment. Where labour disputes arise, courts rely on the guidance concerning the application of legislation governing termination of employment contracts[28]. In our view, where an employee is suspended through no fault of their own, for example on medical grounds or because of the temporary suspension of a special right, legislation should require the employer to offer suitable alternative work where such work is available. This would be appropriate from both an economic and a social perspective.

For civil servants, it is proposed that suspension procedures incorporate the principle of due process by requiring advance notice and an opportunity to provide an explanation. Average earnings should also be retained during any period of suspension arising from a conflict of interest.

We argue that restrictions imposed on digital labour platforms, including account blocking, restrictions on access to information systems and the withholding of work assignments, should be treated as suspension from work whenever they prevent an employee from performing work duties. In accordance with the “human-in-command” approach, such a decision should be made by an authorised official rather than by an automated system. Implementing these



proposals would help bring national labour legislation into conformity with international standards.

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