

# Legal Mechanism for Regulating the Labor of Healthcare Workers

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## Abstract

**Objective:** This article aims to develop a mechanism for the legal regulation of the labor of healthcare workers in Kazakhstan based on comprehensive scientific issues analysis of ensuring the effectiveness of the legal regulation of employment relations, including by studying foreign experience in the countries of the Organization for Economic Cooperation and Development (OECD) and the Eurasian Economic Union (EAEU). **Methods:** Medical and pharmaceutical workers' work regulations were analyzed to identify problems associated with personnel imbalance in Kazakhstan's healthcare industry. The qualitative content analysis and the dialectical method of cognition formed the methodological basis of the study. Regulatory legal acts governing the issues of healthcare workers' labor systems were units of analysis. **Findings:** The authors discovered certain flaws of legislative acts and their implementation about healthcare workers' work. Improvement methods are proposed. **Novelty:** Theoretical novelty is represented by a topical approach of comprehensive analysis of the national labor legislation. Practical novelty includes proposals for the current employment legislation of Kazakhstan (unified regulation of working hours, unified regulation of employment contracts, upgrading remuneration system), including a new law draft, "Status of Medical and Pharmaceutical Workers".

## Keywords:

Labor Law; Legislation;  
Remuneration System;  
Healthcare Workers;  
Kazakhstan; Labor Regulation;  
Employment Law.

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## 1- Introduction

The relevance of the research topic is determined by the special role of healthcare workers in solving a key problem for any country, including Kazakhstan—preserving the life and health of the population as a necessary resource for ensuring economic growth, security, and integrity of the state, and the effective development of the most significant social sphere such as healthcare [1]. Considering that medical and pharmaceutical personnel are one of the most essential human resources of the state and that the Labor Code of the Republic of Kazakhstan No. 414-V dated November 23, 2015 (hereinafter referred to as the RK LC) does not contain provisions dedicated to the labor characteristics of this category of workers [2].

Social and labor relations of healthcare workers represent the object of the study. The norms of labor and healthcare legislation, departmental regulatory legal acts applicable to protecting the health of Kazakhstani citizens, and governing the social and labor relations of medical and pharmaceutical workers form the subject of the study.

Healthcare systems can properly function only if they have all the necessary personnel. According to estimates by the World Health Organization (WHO), by 2030 the shortage of human resources in the health sector could reach 18 million people, and this fact could result in a decrease in the availability and quality of medical care [3]. For many countries, the problem of labor shortages is a consequence of low salaries and excessive responsibility [4]. The range of issues of this study concerns the insufficient development of legal mechanisms for regulating the labor of medical and pharmaceutical workers in Kazakhstan.

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Despite active integration into the international social and labor sphere, the Republic of Kazakhstan has not yet ratified a single ILO Convention regarding remuneration and incentives for labor, although the country is a member of the ILO. At the national level, the remuneration system is governed by numerous regulations, and provides employers with the opportunity to reward employees by applying differentiated salaries and other forms of incentives. However, in their practical application, many difficulties arise due to the lack of uniform requirements and norms, connecting elements between all regulatory documents.

Prior, activities of medical workers in the national legal framework were analyzed in the studies of such Kazakhstani authors as Dautbaeva [5], Dauletkaliyeva & Nukeshtayeva [6], Idrysheva [7], Malbekova et al. [8], Smatlayev et al. [9], Bogatyreva et al. [10]. Particularly, mechanisms of labor legal regulation were investigated by several Kazakhstani labor researchers who published a monograph, “Legal mechanism for regulating the labor of medical and pharmaceutical facilities: a monograph” [11]. Still, the legal status of healthcare workers in Kazakhstan has been comprehensively analyzed so far by a small number of scientists [12–15], and no authors have proposed ways to improve the existing legislation yet. The present research is intended to define the disadvantages of the existing healthcare labor legislation in Kazakhstan and propose ways of improvement.

### *1-1- Structure of the Study*

Introduction establishes the research aim, which is to analyze the modern labor legislation of medical workers in Kazakhstan and propose the means to improve it. Also, the introduction identifies the research gap left by the previous publications in the investigated area. Literature review extends the analysis of previously published papers in relevant fields and provides a picture of the topic's elaboration extent. The methods present a research model and approach, which include two main components. The first one is an analysis of labor-regulating documents in Kazakhstan in terms of their effectiveness and implementation extent. The second is interpreting the results of the survey that was performed among medical and pharmaceutical workers in Kazakhstan. The research flowchart completes the Methods section.

Results section presents the findings of analytical procedures on identifying the inefficient parts of Kazakhstan healthcare labor regulation and investigating healthcare workers sample group's opinion on the study subject. Respectively, the means of situation improvement are proposed in the Results section as well. Discussion section briefly comments novel tendencies in healthcare labor regulations and their alignment with present research findings. Conclusions summarize the findings of the study (identified flaws of healthcare labor legislation in Kazakhstan and proposals for improving the former, including a new law draft) and formal features of the article (novelty, limitations, and future research perspectives).

## **2- Literature Review**

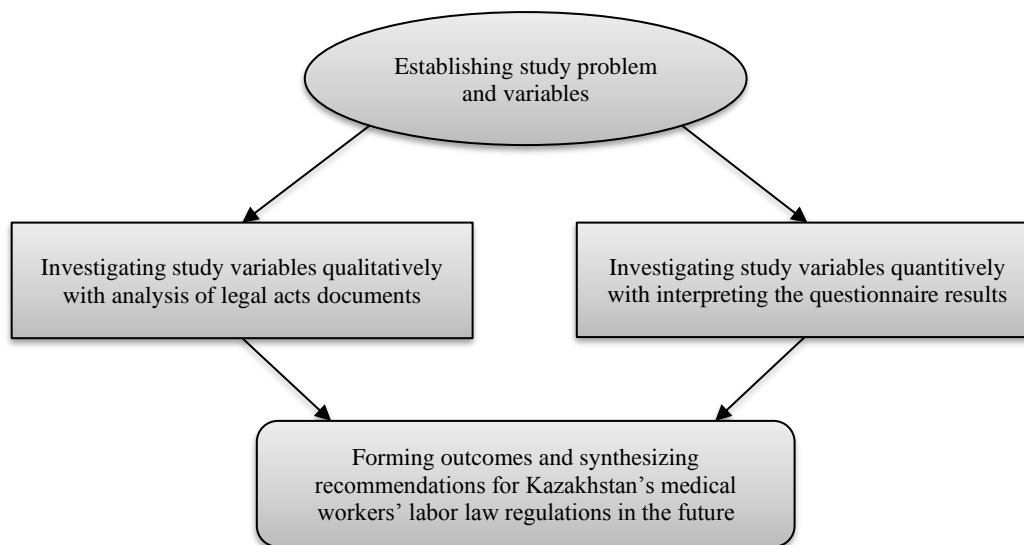
Legal regulation of labor protection is crucial for the worker's health, safety, and productivity. This is why studies of legal regulations of healthcare workers' labor are widely represented by international legal scientists [16–25]. Discussion of regulatory challenges and issues faced by healthcare workers has been explored in different studies by Pozgar [26]. Meanwhile, Tavuyanago [27] emphasizes the importance of labor law and justice for advancing social justice in the workplace. Similarly, studies such as Adamopoulos [28] also focus on social justice for the healthcare workplace. Fauziah & Mukhlis [29] explored civil laws and laws concerning health and discussed ethical and legal considerations relating to the protection of the medical practitioners during COVID-19. Meanwhile, Inshyn et al. [30] discussed the violations of healthcare workers during this COVID-19 pandemic.

In Kazakhstan's legal science, on the other hand, the legal status of healthcare workers has only been studied comprehensively in the context of medical law, medico-legal conflictology, and social healthcare. For example, the thesis of A.M. Auezova [31] develops a complex of theoretical and practical propositions on improving the mechanism of securing professional responsibility of medical workers. Shalkharov [32] analyzes matters of medical workers' activity legal regulation in the area of providing medical service by them within a civil law framework in his thesis, “Issues of legal regulation of the activities of medical workers” [32].

According to Galiakbarova [33], the legal status of pharmaceutical and medical workers is influenced by particular professional regulations and general labor laws. Meanwhile, Saputri [34], Alkhaldi et al. [35], Maffoni et al. [36], Barr [37], and Birkeland [38] discuss the responsibility of the employer regarding the maintenance of the work setting of the healthcare workers and their role while ensuring their mental and physical health. According to Nurgaliyeva & Olzhabayeva [39], the recent changes in Kazakhstan's industry-specific Labor Unions according to the standards of the International Labor Organization (ILO) enhance the potential of Labor Unions and help to protect the socio-labor rights of medical workers. Meanwhile, the practice of international state-legal validates legal foundations for the companies and allows the implementation of legal regulation of the health care system in Kazakhstan. Bayazitova et al. [40] explore the labor legislation norms during work from home. Studies by Zhumabayeva & Nurmagambetov [41], Khasenov [42], Insebayeva & Beysembayev [43], Kosherbaeva et al. [44] provide a discussion of legal regulation of online platforms and issues related to the overarching concept of these platform employment.

### 3- Methods

At the surface level, this study utilized such common research methods such as systemic analysis, comparison, and source review. Figure 1 represents the research model of this paper.



**Figure 1. Research model**

The research methodology devised for investigating the adaptation of legal frameworks concerning labor compensation and labor conditions within Kazakhstan's healthcare sector employs a rigorous mixed-method design, involving both qualitative and quantitative approaches. The qualitative method is significant in providing comprehensive and in-depth details of labor laws and regulations that serve as the basis of the legal framework governing labor compensation. Analyzing these documents qualitatively allows for an understanding of the specific provisions, and structures guiding compensation in the healthcare sector. It helps in identifying areas requiring adaptation to address HR challenges effectively.

The dialectical method of understanding legal reality was used in writing this study. The validity of the confirmations and conclusions presented in the dissertation was achieved through common scientific methods of knowledge: analysis, deduction, historical, statistical, and systematic approaches. Also, specific legal study methods were used, such as formal legal and comparative legal ones.

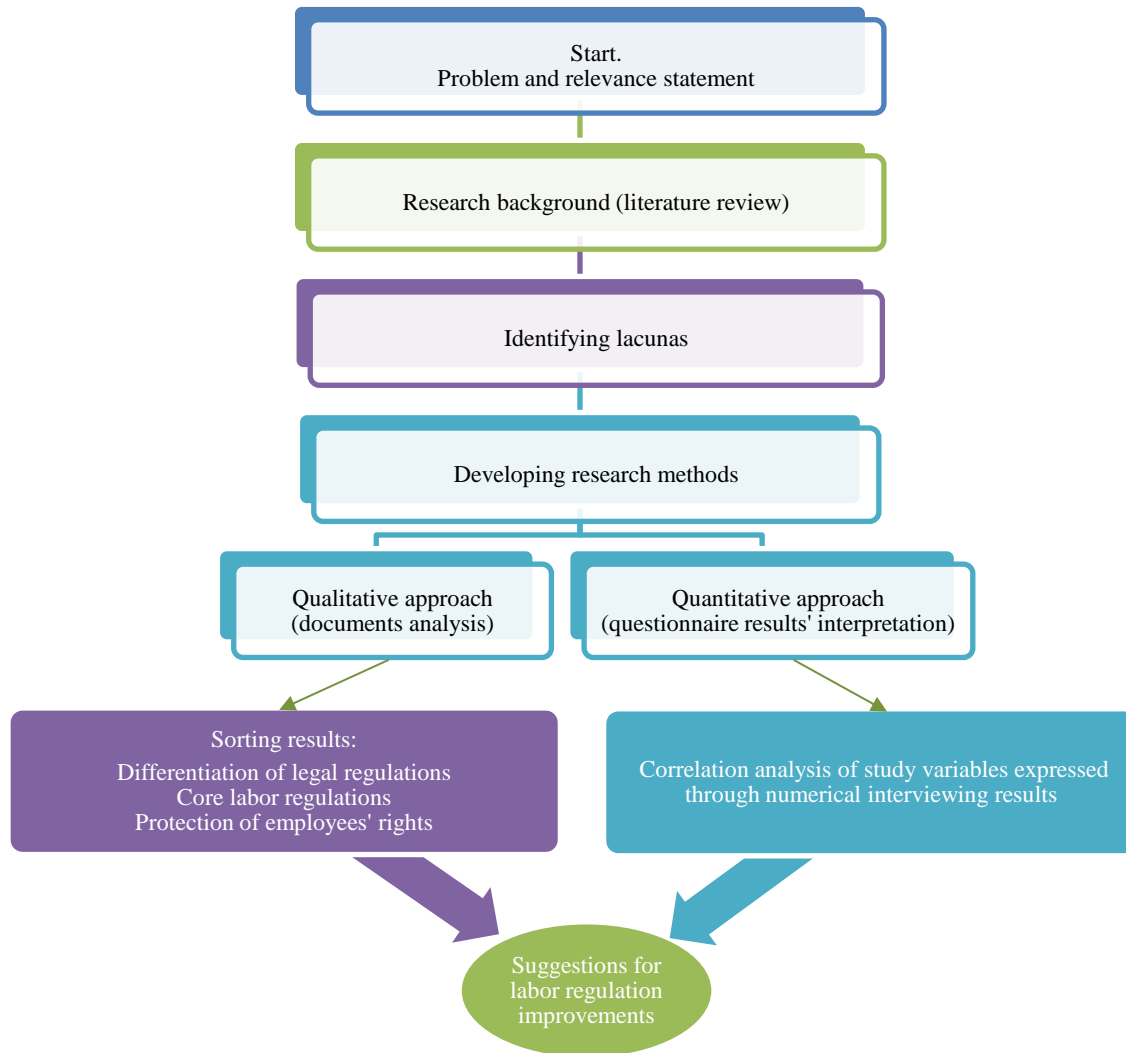
The majority of the article utilizes an analytical approach centered on an investigation of Kazakhstan's healthcare labor regulation documents. The legislation-related nature of the study assumes that document analysis is essential, so a review of regulations, laws, government orders, and other official documents is implemented in order to obtain a full grasp of the healthcare labor situation in Kazakhstan.

To access scholarly works and articles related to the evolving landscape of labor compensation within Kazakhstan's healthcare sector, materials published within the past decade, specifically from 2014 to 2023, were considered using key databases (such as Research Gate), and specific terms and phrases such as "labor compensation", "Kazakhstan healthcare", and "workforce regulations" were used. The use of legal framework and regulation will provide the details about compensation and benefits to healthcare employees, while scholarly articles will offer how these laws have been effective in reducing the challenges and issues of human resources problems in healthcare.

A quantitative approach was considered using primary data sources collected from healthcare employees and managers inquiring about the issues faced in the healthcare setting and how legal frameworks and regulations were effective in addressing those challenges. The sample size for this research was 200, and was taken from Parker's sampling table considering the 95% of confidence interval and 5% margin of the survey. A semi-structured questionnaire (Appendix I) survey was used with stratified sampling strategically convenient for the investigator to distinguish participants required for the study. Such entities as Labor Regulations, Human Resource Challenges, Labor Compensation were initially utilized as sections of the questionnaire and then generalized as study variables.

The participants (healthcare employees and managers) were contacted through a referral, and participants were required from the public hospitals of Kazakhstan. The questionnaire included questions related to legal framework, compensation, challenges, and job satisfaction. The survey was designed to be anonymous in order to gain candid responses from the participants. Experience of at least 5 years serving in the healthcare sector was the primary criterion for inclusion, while the only exclusion criteria were experience of less than 5 years and being a national of other country. A five-point Likert scale was used (1–strongly disagree; 5–strongly agree). To ensure the ethical aspect of the research, informed consent from the participants was taken, and confidentiality and privacy were ensured. Both written and verbal

approvals from the participants were taken before proceeding with the process of data collection. The names and personal details, including email, were made confidential for privacy reasons. To assess the reliability of the sample, Cronbach's alpha was employed, where values of 0.6 or higher indicate stronger reliability. A value of 0.889 was achieved, which indicates a high level of reliability for the questionnaire. For validity, pilot testing was conducted with a small group of participants (30) to identify unclear or confusing questions, ensuring the questionnaire measures the desired constructs effectively. To analyze the data, IBM SPSS software was used to conduct regression and correlation analysis to identify strength between the variables and the impact on independent variables (labor compensation and human resource challenges) and dependent variables (adaption of legal frameworks). The quantitative findings were analyzed with the support of qualitative literature and legal frameworks and regulations. Figure 2 presents the research flowchart.



**Figure 2. The research flowchart**

#### 4- Findings

In order to be able to investigate medical workers' labor regulation properly, it is necessary to define the extent of distinction of this employment area (Figure 3).



**Figure 3. Differentiation of healthcare workers' special labor status**

#### 4-1- Special Labor Law Status of Healthcare Workers

Healthcare workers are engaged in medical and pharmaceutical activities, as defined in the Code on Public Health. Thus, medical activities are defined as “the activities of individuals who have received technical and professional, post-secondary, higher, and/or postgraduate medical education, as well as legal entities, aimed at protecting the health of the population” (paragraph 184, clause 1, article 1). And pharmaceutical activities are defined as “activities carried out in the field of healthcare for the production and/or manufacturing and/or wholesale and/or retail sale of medicines and medical products, associated with the procurement (purchase), storage, import, export, transportation, quality control, registration, distribution, use, disposal, and destruction of medicines and medical devices, as well as ensuring their safety, quality, and effectiveness” (paragraph 275, clause 1, article 1).

Their legal status is directly influenced by the peculiarities of their labor, such as the focus on preserving human life and health; severe mental stress; harmful and dangerous working conditions; high risk of contracting infectious and other diseases; limitation of certain rights and increased legal liability; the need for medical workers to observe medical confidentiality and ethics; and many other factors; still, individuals must have a certain level of special professional education to perform medical or pharmaceutical activities [45].

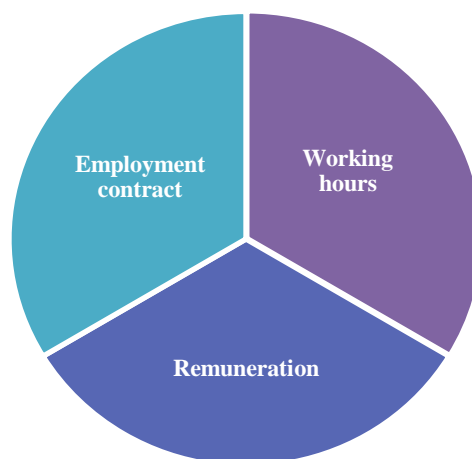
Medical workers’ labor, under the conditions of special rules, has a special labor legal status, which is proposed to be understood as a set of labor rights, duties, and measures of responsibility based on the law and inherent only in medical workers, implemented in the process of emergence, change, suspension, and termination of labor relations with medical organizations.

A “medical worker—an individual who has professional medical education and performs medical activities” is a special subject of labor law (clause 154 of Article 1 of the Code on Public Health); “a pharmaceutical worker is an individual who has pharmaceutical education and performs pharmaceutical activities” (clause 272, clause 1, article 1 of the Code on Public Health). From the viewpoint of the labor legislation requirements, these definitions fully fit into the general concept of an “employee”. At the same time, these definitions do not consider the fact that these employees perform medical and pharmaceutical activities not only on a professional basis, but also fulfill a special labor function, which is critical when establishing measures of social guarantees and social protection.

The list of rights and obligations of medical and pharmaceutical workers when carrying out professional activities is given in Articles 270, 271 of the Code on Public Health. Unfortunately, the list of rights does not include the “right to protection of professional honor and dignity,” which is of great importance in the activities of healthcare workers. This right can be exercised in the event of various accusations from patients, society, and the employer in the case of public criticism of the treatment methods of a doctor or pharmacist (for example, if they recommend specific medications that have many side effects, etc.). For the full implementation of this right, some authors quite rightly propose public protection mechanisms along with judicial and administrative ones [46]. It is proposed to create conflict commissions at healthcare organizations that will consider claims against medical workers from patients. They also believe that labor unions and other organizations protecting healthcare workers’ rights should play a big role in protecting their honor and dignity. According to Art. 274 of the Code on Public Health, a Code of Honor for medical and pharmaceutical workers was developed in Kazakhstan, which established the moral and ethical public responsibility for these workers [47].

#### 4-2- Components of Medical Labor Relations

Figure 4 briefly presents main components of Kazakhstan medical workers’ labor relations.



**Figure 4. Essential components of Kazakhstan medical workers’ labor relations**



#### ***4-2-1- Peculiarities of the Employment Contract***

An employment contract is concluded with medical and pharmaceutical workers, as persons with special labor legal personality, to perform a special labor function on a professional basis; therefore, it has its own specific peculiarities that differ from the usual understanding of the employment contract given in paragraph 36, clause 1, Art. 1 of the RK LC [2].

Based on an employment contract with medical and pharmaceutical workers, labor law relations arise along with other legal relations, without the existence of which it is impossible to provide medical care: first, the legal relationship between the patient and the healthcare institution, within which there is a legal relationship between the employee and the patient regarding the provision of medical care; second, the legal relationship for compulsory health insurance, which arises between the subjects of compulsory health insurance, which are the citizen, the policyholder, the medical insurance organization and the medical institution, and, finally, third, the labor relationship, which plays a key role in these legal relationships. And this role is conditioned by the fact that citizens cannot perform their professional activities as medical or pharmaceutical workers until they register officially their labor relations with a healthcare institution or receive the status of a private practitioner or pharmacist (individual entrepreneur) [48].

Recently, the literature on labor law has increasingly raised the issue of additional settlement, i.e., the inclusion of additional provisions in collective agreements and individual agreements differing from those established in labor legislation. And this also applies to an employment contract, the content of which is subject to change due to the need to adapt to different life situations. Based on the conclusion of experts from the International Labor Organization (hereinafter referred to as the ILO), some authors conclude that a certain level of labor flexibility is acceptable in cases where it does not destroy standard labor relations and is based on labor market guarantees [36].

Fixed-term employment contracts represent an option for deviations from the typical model of labor relations. In Kazakhstan legislation, the possibility for medical and pharmaceutical workers to enter into fixed-term employment relationships is not limited in any way, although objective and subjective reasons could be enumerated: the special nature of the organization's activities; the terms of the collective agreement, etc.

Article 30 of the RK LC states that an employment contract concluded for a certain period can be extended no more than two times. And this rule neither complies with international standards, nor protects the employee from abuse by the employer when concluding fixed-term employment contracts, since it does not contain guarantees against establishing specific terms for the employment contract. In this regard, it is reasonable to bring Art. 30 of the RK LC in terms of concluding fixed-term employment contracts in line with ILO C-158 Termination of Employment Convention [49], including at the initiative of the employer, and the corresponding ILO Termination of Employment Recommendation No. 166 [50], which contains provisions on the need to establish guarantees against the use of employment contracts for a certain period, establishing a number of measures to protect workers:

- a) Limiting the use of fixed-term employment contracts to cases where, given the nature of the work to be performed or the conditions of performance thereof, or the employee's interests, this employment relation cannot be established permanently;
- b) Considering fixed-term employment contracts as permanent employment contracts, with the exception of the cases specified in subclause a) of this clause;
- c) Considering fixed-term employment contracts that were renewed one or more times as permanent employment contracts, with the exception of the cases specified in subclause a) of this clause" [50].

#### ***4-2-2- Problems of Legal Regulation of Working Hours of Medical and Pharmaceutical Workers***

The Constitution of the Republic of Kazakhstan is the legal basis for the working hours and rest time of medical workers [51]. It establishes one of the most essential human rights—the right to rest, which is guaranteed to those working under an employment contract with the statutory duration of working hours, the provision of days off and holidays, and paid annual leave (clause 4, art. 24). In all normative legal acts and, primarily, in the generally accepted principles and norms of international law, an inextricable connection can be traced between working hours and rest time (Universal Declaration of Human Rights [52]; International Covenant on Economic, Social, and Cultural Rights [53]; ILO Convention No. 47 [54], ILO Recommendation No. 171 [55]; ILO Recommendation No. 116 [56]; UN Convention on the Elimination of All Forms of Discrimination against Women [57]; ILO Convention No. 105 [58]; ILO Convention No. 132 [59], etc.). This is quite understandable, since the duration of working time determines the duration of rest time and vice versa. The ILO Co47 Forty-Hour Week Convention [32] contains a very important rule: the principle of a forty-hour week should be applied in such a manner that the standard of living is not reduced in consequence. ILO C-171 Night Work Convention [55] and R-178 Night Work Recommendation [60] are devoted to solving a number of issues related to work at night time, which explain the concepts of “night work”, “night worker”, indicate the scope of night work, the need to secure the right of workers to a medical examination, transfer to another job, and stipulate night work for women.

In accordance with the RK LC, “working hours is the time during which the employee, in accordance with the employer’s acts and the terms of the employment contract, performs labor duties, as well as other periods of time that, in accordance with this Code, other normative legal acts, regulatory legal acts of Kazakhstan, and the collective agreement by the employer’s act are classified as working time” [2]. The vulnerability of this definition, in our opinion, lies in the fact that, along with collective agreements, the employer’s acts are mentioned that can set limits on working hours. It seems that the duration of working hours may also depend on the employer’s independent decision, which cannot but lead to a violation of the standards established in labor legislation [61].

The sectoral agreement between the Ministry of Health of the Republic of Kazakhstan, the Kazakhstan Sectoral Labor Union of Health Workers, and the National Healthcare Chamber for 2020–2022 [62] also remains silent on the issue of working hours and rest time for medical and pharmaceutical workers.

#### **4-2-3- Healthcare Workers’ Remuneration**

According to the C-131 Minimum Wage Fixing Convention [63], an ILO member state that ratifies this Convention is obliged to introduce a minimum wage system covering all groups of employees. Factors that are considered in determining the minimum wage level include (to the extent possible and applicable) the essential living needs of workers and their families. At the same time, it is necessary to create and maintain a procedure that regards national conditions and needs, allowing for the establishment and revision of the minimum wage [64]. Highly qualified professionals and experts should participate in establishing the minimum [63, 65]. The ILO Protection of Wages Convention No. 95 [66] and Recommendation No. 85 [67] state that “the term “wages” means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered” [66].

Wages, according to this Convention, shall be paid directly to the worker concerned [66]. At the same time, workers have guaranteed freedom to dispose of wages at their own discretion. It is paid exclusively in legally circulated currency. Partial payment of wages in the form of allowances in kind (with the exception of liquor of high alcoholic content or of noxious drugs) may be permitted if such payment is customary and desirable, in the interests of the worker and his family, and benefits them [68].

Unfortunately, the ILO wage conventions do not have an effective mechanism for their implementation even by those states that have ratified them. The Republic of Kazakhstan is no exception, where significant wage delays occur everywhere [66].

A number of innovations in remuneration were included in the RK LC in May 2020; in particular, liability is provided for discrimination against Kazakhstani workers in terms of wages, working conditions, and rest conditions compared to attracted foreign labor. Amendments were also made in pay for night, overtime, and holiday work, and the employer’s liability for late payment of wages was increased. In addition, for the employer’s placement of vacancies containing signs of discrimination, an administrative fine was provided in the amount of 15-100 monthly calculation indices and 30-120 monthly calculation indices for violation of the workers’ rights for equal conditions in professional activities (wages, production, and living conditions); the calculation index for calculating penalties was established on April 1, 2022, and equals to 3,450 tenge [2].

New approaches to labor incentives involve abandoning traditional modern systems or payroll complexity index and replacing them with remuneration consisting of a base rate and incentive payments, depending on the employee’s individual results and the performance of the department where he works.

#### **4-3- Protection of Labor Rights and Interests of Medical and Pharmaceutical Workers**

First and foremost, the authors should distinct there are two main types of labor rights protection: judicial and by Labor Unions (Figure 5).



**Figure 5. Types of labor rights’ protection**

##### **4-3-1- Protection of Labor Rights and Interests of Medical and Pharmaceutical Workers by Labor Unions**

According to the Law of the Republic of Kazakhstan No. 211-V “On Labor Unions” [69], Labor Unions exercise their functions through their participation in lawmaking, exercise of rights and enforcement of law.

This law attaches a general set of rights to Labor Unions, regardless of the types and levels of Labor Union consolidation. The numerous rights include the following ones: participation in the development of normative legal acts on labor and social rights and interests of citizens, including on issues of citizens' employment; participation in the resolution of labor disputes in compliance with labor legislation and legislation on mediation [69].

Having studied the intensity of participation of Labor Union organizations of each level of their structure in law-making and law-exercising activities, Bondarev [70] comes to the conclusion that primary Labor Union organizations and Labor Unions that are not included in the general structure of Labor Unions demonstrate a high level of involvement in the process of exercising rights, since precisely at this level of the Labor Union structure direct interaction with employees occurs, they represent employees' interests before employers in government bodies, courts, and third parties [70].

In recent years, Labor Unions have devoted most of their work to defending the interests of medical workers who contracted coronavirus infection and recovered from it, but did not receive compensation payments. Despite the fact that officially, according to the joint temporary order of the Minister of Labor and Social Protection of the Population of the Republic of Kazakhstan No. 129 dated April 9, 2020 and the Minister of Health of the Republic of Kazakhstan dated April 9, 2020 No. KR DSM-35/2020 (terminated by a joint order of the Minister of Health of the Republic of Kazakhstan dated October 24, 2020 No. KRDSM-152/2020 and the Minister of Labor and Social Protection of the Population of the Republic of Kazakhstan dated October 24, 2020 No. 413), which approved the "Rules for the implementation of lump sum social payment to healthcare workers in the event of their infection with coronavirus infection or viral pneumonia during anti-epidemic measures, as well as to their families, in the event of the death of a healthcare worker, regardless of participation in anti-epidemic measures" [71], the remaining 4 thousand were not at risk and were not considered involved in work against COVID-19. The above temporary joint order No. 129 was amended in August 2020, where the list of specialists for receiving salary bonuses and lump sum social payments was expanded. Unfortunately, these amendments also could not cover all healthcare workers who had contact with COVID-19 patients.

Sectoral Labor Unions of healthcare workers are also guided by ILO Nursing Personnel Convention No. 149 [72] in their activities. By order of the Minister of Health of the Republic of Kazakhstan No. KR DSM-199/2020 dated November 23, 2020, the "Rules for the provision of nursing care" were approved, providing the List of nursing care services [73].

Currently, the Republican Labor Union of Health Workers is raising the issue of the need to ratify the said ILO Convention No. 149 and the Social Security (Minimum Standards) Convention No. 102, aimed at ensuring the quality and level of protection of the life and health of medical workers. Currently, the labor legislation enshrines the obligation of an employee to apply to the conciliation commission for the resolution of an individual labor dispute, i.e., a mandatory pre-trial procedure for resolving the dispute, which, in our opinion, contradicts paragraph 2 of Article 13 of the Constitution of the Republic of Kazakhstan, which guarantees the right to judicial protection for citizens of their rights and freedoms. Subsequent appeal to the court is not a guarantee of the right to judicial protection, since, according to many authors, and statistical data, conciliation commissions are not an effective tool for resolving labor disputes [74].

#### ***4-3-2- Judicial Protection of Labor Rights and Interests of Medical and Pharmaceutical Workers***

Considering individual labor disputes among medical and pharmaceutical workers, Kazakh courts are guided by the basic principles of labor law, since they:

- Reflect the essence of labor law norms, help understand the meaning of labor legislation;
- Promote the correct application of the norms of current legislation, identifying and eliminating existing gaps and conflicts therein;
- Determine ways for further development of labor legislation and its reform.

The application of the principles listed in labor legislation in practice causes a lot of controversy, in connection with which the regulatory decisions of the Supreme Court of the Republic of Kazakhstan and the legal positions of the Constitutional Court of the Republic of Kazakhstan acquire a special role.

Judicial practice is becoming increasingly important in the mechanism of legal regulation of labor relations of medical and pharmaceutical workers. When considering labor disputes, Kazakh courts always focus on Regulatory Resolution No. 9 of the Supreme Court of the Republic of Kazakhstan, "On some issues of the application of legislation by courts in resolving labor disputes" [75]. According to subclause 5 of clause 2 of Article 7 of the Law of the Republic of Kazakhstan No. 480-V "On Legal Acts" [76], this resolution refers to the main regulatory legal act, is a source of labor law, and may be referred to as the legal basis for resolving labor disputes in various decisions of the courts of general jurisdictions.

Clause 2 of Article 13 of the Constitution of the Republic [51] guarantees everyone the right to judicial protection, but despite this, the RK LC contains provisions for the mandatory preliminary out-of-court resolution of a labor dispute



by the Conciliation Commission (hereinafter referred to as the CC). In practice, there are a sufficient number of labor disputes related to abuse of rights by medical workers. The number of such disputes has increased due to the infection of doctors and pharmacists during COVID-19.

In case of abuse of rights by the parties to the employment contract in the exercise of labor rights, resulting in adverse consequences for one of the parties, for example, on the part of the employee, the court refuses to protect the right and does not impose on the employer the obligation to compensate for damage caused to the employee in connection with the abuse.

The authors propose to include the principle of the inadmissibility of abuse of rights by parties to labor and other directly related relations in Article 4 of the RK LC “Principles of the Labor Legislation of the Republic of Kazakhstan”. Also, the RK LC should provide a separate article “Knowingly unfair exercise of labor rights (Article 22-1) with the following content:

1. The good faith and fair dealing of the parties to labor and other relations directly related thereto, and the reasonableness of their actions shall be assumed.
2. The exercise of labor rights solely with the intention of causing harm to each other by the parties to the employment contract, actions in circumvention of the law, and other deliberately dishonest exercise of labor rights shall be prohibited.
3. In case of non-compliance with the requirements of clause 2 of this article, the court, considering the nature and consequences of the abuse committed, shall deny the person protection of his rights in whole or in part, and also takes other measures provided for by law.

If, as a result of abuse of rights, a violation of the rights of another person occurs, such person shall have the right to demand compensation for the damage caused thereby.

#### ***4-4- Analysis of Healthcare Workers’ Opinion on Labor Regulations in Kazakhstan***

The study approached 200 employees and managers in Kazakhstan’s public healthcare, and used employee statistical analysis to address the two key research questions; human resource challenges in Kazakhstan healthcare, and the adaption of legal framework for labor compensation to help address the human resource challenges. A correlation and regression analysis technique were employed, and the results indicate that there exists a positive correlation between legal regulation, human resource challenges and labor compensation.

The findings indicate a negative relationship between legal regulation and labor compensation, while a positive link between human resources challenges and labor compensation.

The Table 1 shows the correlation analysis between the variables legal regulations (LR), human resource challenges (HRC), and labor compensation (LC).

**Table 1. Correlation Analysis**

Correlations				
		LR	HRC	EMJP
LR	Pearson Correlation	1	0.769**	0.539**
	Sig. (2-tailed)	-	<0.001	<0.001
	N	200	200	200
HRC	Pearson Correlation	0.769**	1	0.630**
	Sig. (2-tailed)	<0.001		<0.001
	N	200	200	200
LC	Pearson Correlation	0.539**	0.630**	1
	Sig. (2-tailed)	<0.001	<0.001	-
	N	200	200	200

\*\* Correlation is significant at the 0.01 level (2-tailed).

The correlation analysis revealed significant relationships among the variables: Legal Regulation (LR), Human Resource Challenges (HRC), and Labor Compensation (LC). Firstly, there is a strong positive correlation between LR and both HRC ( $r = 0.769$ ,  $p < .001$ ) and LC ( $r = 0.539$ ,  $p < 0.001$ ). This implies that as legal regulations regarding labor compensation increase, there tends to be a corresponding increase in the perceived effectiveness in addressing human resource challenges. Furthermore, HRC and LC also show a strong positive correlation ( $r = 0.630$ ,  $p < 0.001$ ), implying that as human resource challenges can impact the employee job performance. The findings indicate that there exists a strong correlation between LR and HRC.

The ANOVA results as exhibited in Table 2 shows a significant level of variability in LC as seen by the F-value ( $F = 66.833$ ,  $p < 0.001$ ). The predictors LR and HRC help explain the variance noted in LC.

**Table 2. ANOVA results**

ANOVA <sup>a</sup>					
Model	Sum of Squares	df	Mean Square	F	Sig.
Regression	1209.468	2	604.734	66.833	<0.001 <sup>b</sup>
Residual	1782.532	197	9.048		
<b>Total</b>	<b>2992.000</b>	<b>199</b>			

a. Dependent Variable: LC

b. Predictors: (Constant), HRC, LR

Likewise, the coefficient table shows a non-significant relationship between LR and LC, as indicated by the p-value ( $p = 0.127$ ). Hence, there exists a weak statistical relationship between LR and LC. On the other hand, HRC is found to show a significant relationship with LC with a p-value ( $p < 0.001$ ). The standardized coefficient (Beta) implies a positive relationship with EMJP. This can be elucidated that with an increase in HRC, there is a significant increase in LC. Hence, the regression analysis indicates a need for addressing HR challenges in order to improve the morale and performance of employees.

## 5- Discussion

The results indicate a positive correlation exists between legal regulations, human resource challenges, and labor compensation. It can be said that the implementation of legal regulation and compensation can contribute to addressing human resource problems, which in turn benefit in improving the job performance of employees. This is exemplified by the regulations of the Fair Labor Standards Act (FLSA) and Family Medical Leave Act (FMLA) implemented in the United States, which aimed to address the major HR challenges such as minimum wage and overtime [77]. Researchers, including Kim & Allmang [78], align with the current results, highlighting that addressing minimum wage issues and overtime pay exerts a positive impact on the employees' satisfaction and performance. Similarly, FMLA is found to emphasize employee needs, including unpaid leaves, especially for medical workers, which is confirmed by Malachowski [79], stating that legal protection of employees positively benefits their retention and maintaining work-life balance, hence affecting their morale and performance. The current findings also support [28], underlining that the implementation of OSHA addresses the need for safety and protection of the healthcare workforce, making employees feel protected and satisfied, which nevertheless affects their morale and dedication to work.

On a global scale, the problem of insufficient healthcare workers' rights compliance presents in various parts of the world and includes legal areas in different extents. For example, the study of Ahmed et al. indicates that labor union membership among USA health care workers appeared rather low in recent years, since this membership was not so much a form of employment protection but more the regulation mean for extra working hours remuneration [80]. In contrast, healthcare labor unions in Kazakhstan were found sufficient and universally applicable for employment rights protection, according to our study. Another research claims there is racial discrimination in the USA regarding health workers wages, which actually aggravates already oppressed population groups [81]. Once again, the present research has established that legislation on healthcare workers' rights in Kazakhstan considers the problem of discrimination and takes certain measures that help to eliminate any employment discrimination in the country. A study by Sanchez reveals that nurses in the USA, being a group of healthcare workers, are not even required to understand their labor rights due to healthcare industry optimization processes [82]. Self-awareness of healthcare workers in Kazakhstan is addressed in this study, though, which proposes certain ways to improve the labor rights of healthcare workers and therefore make the knowledge of these rights more accessible. Sometimes violations of healthcare workers' rights can happen outside a formal legislative framework.

For example, the study of Ariza-Montes et al. reveals that healthcare professionals in Europe face actual bullying in their workplaces [83]. Such a problem lies in the framework of general human rights regulation and is unexpected for healthcare workers specifically. In order to avoid similar unpredictable and mundane problems in Kazakhstan's healthcare labor market, the legislation must cover as many peculiar and common issues as possible. The latter goal is expected to be achieved via ratifying all the ILO conventions and adapting a new law on the status of healthcare workers, proposed by the authors of this study. Clearance and elaboration of the extent of healthcare labor legislation is vital because there is a possibility of abusing the ambiguities in formal definitions. For example, research by Gómez Dantés reveals that Cuban authorities utilize the exportation of physicians without proper consideration for their compensation and working hours [84]. Officially, it is presented as voluntary help from Cuban nations to other countries and therefore an action that is supposed to secure global human rights for medical assistance; however, the rights of Cuban physicians are actually violated [84]. Once again, the proposition for developing the new law about healthcare workers status in

Kazakhstan is meant to avoid similar ambiguities and exploits for employers in Kazakhstan. Overall, the fact that Kazakhstan's authorities indicate certain advances in healthcare labor regulation (although not as efficient as this study could establish as a goal) shows a positive dynamics for Kazakhstan as a state compared to some other examples, such as Brazil's 2017 Labor Reform, which practically eliminates healthcare workers' right to protect themselves from hazards related to contact with ill people [85].

In the context of Kazakhstan, the findings are also in line with the adaptation of legal regulations; for example, Article 81 of Labor Law emphasizes the guarantees and compensation to employees, such as social benefits, monthly wages, and protection of job in case of leave for upgrading professional skills [86]. According to the report of the OECD [87], economic progress in Kazakhstan did benefit in improving the healthcare system and its overall outcomes. However, irrespective of reforms in healthcare, the governance system is centralized, which has benefited but also increased challenges. The quality of care is affected, and healthcare service delivery is fragmented due to a centralized system resulting in insufficient staffing and poor healthcare facilities.

However, regardless of the problems in the healthcare system, the benefits offered by legal regulation and laws such as Article 86 of the Law ensure the monetary and social benefit to parents, especially for maternity leave. Furthermore, Kazakhstan legal regulation ensures rest time for employees so that they do not get burnout due to excessive work hours. This correlates with the findings how legal regulations set standards for work, addressing human resource problems and, in return, affecting employees' morale positively. The findings highlight a positive correlation between legal regulation and human resource challenges, which means that the adaptation of the Labor Code and compensation can address challenges faced in Kazakhstan's healthcare industry.

## 6- Conclusions

Summarizing the results of this study, the labor specifics should be established for healthcare workers through differentiation in the independent law of the Republic of Kazakhstan, "Status of Medical and Pharmaceutical Workers".

Kazakhstan has ratified none of the ILO Conventions devoted to the issues of working hours yet, although the country is a member of the ILO. Nevertheless, the authors propose to set the normal working time for medical workers at 39 hours per week. It is also necessary to introduce supplements and amendments regarding the establishment of multi-shift working hours for medical workers in health care institutions with a round-the-clock operating schedule and a maximum work shift duration, approve the procedure for compensating for these working conditions that deviate from normal ones, and provide some medical workers with additional annual leave for continuous work experience in one medical organization.

It was also proposed to provide new articles on breaks during working hours, commuting time, time during "home care", time when providing remote medical services, etc. Consider the possibility of increasing annual leave for medical and pharmaceutical workers and introducing alternating leave, as in some countries should be considered in laws.

A fixed-term employment contract is an option for deviations from the typical model of labor relations. In Kazakhstani legislation, the possibility for medical and pharmaceutical workers to enter into fixed-term employment relationships is limited. Art. 30 of the RK LC states that an employment contract concluded for a certain period can be extended no more than twice. The authors propose to harmonize this article with the ILO Termination of Employment Convention No. 158 [49] and the corresponding Termination of Employment Recommendation No. 166 [50] on the need to establish guarantees against the use of employment contracts for a certain period, establishing a number of measures to protect workers:

- Limiting the use of fixed-term employment contracts to cases where this employment relation cannot be established permanently;
- Considering fixed-term employment contracts as permanent employment contracts, with the exception of the cases specified in subclause a) of this clause;
- Considering fixed-term employment contracts that were renewed one or more times as permanent employment contracts, with the exception of the cases specified in subclause a) of this clause.

New approaches to labor incentives involve abandoning traditional modern remuneration systems or payroll complexity index and replacing them with remuneration consisting of a base rate and incentive payments, depending on the employees' individual results and the performance of the department where they work.

In matters of remuneration for medical and pharmaceutical workers in Kazakhstan, it is necessary to rely on sectoral and regional agreements on social partnership to exclude unjustified differentiation of wages within a single organization. Much of this issue can be resolved in the bill "On Social Partnership" currently being developed by the Kazakhstan Government.

An analysis of social partnership acts regarding healthcare workers shows that there is a widespread inclusion of real guarantees therein on the issues of working hours, rest time, and wages, and also on other, no less important issues such as working conditions, labor protection, and the health of workers, guarantees by the Labor Union, and many others.

The theoretical novelty of this study lies in the topical approach of comprehensive analysis of the national labor legislation aimed at identifying the flaws and therefore developing improvements. Practical novelty of this study includes recommendations to the current healthcare labor legislation of Kazakhstan, such as unified regulation of working hours, unified regulation of employment contracts, upgrading remuneration system, and also developing a draft of a new law, “Status of Medical and Pharmaceutical Workers”.

Scientific and practical insight into the problems covering the professional labor activities of Kazakhstani medical and pharmaceutical workers is associated with the objective demand for labor regulation improvement for this category of workers. The study of the publications of scholars on labor, civil, and medical law, advanced foreign experience, and Kazakh law enforcement practice, considering the protective function of Labor Unions and courts, made it possible to draw informed conclusions and make individual proposals and supplements to the current legislation in order to improve working conditions of medical and pharmaceutical workers in Kazakhstan.

### ***6-1-Limitations and Further Perspectives***

Limitations of this study were the following:

- To begin with, the study’s topic is very complex, so fitting deep investigation into the single article format is quite a challenge itself;
- Official statistics are insufficient regarding specific matters analyzed in this study;
- The legal area analyzed in this study includes an immense volume of subordinate legal acts, which is practically impossible to cover completely.

The issues of legal liability of medical and pharmaceutical workers, labor protection and safety, and other significant labor issues concerning the considered category of workers, which objectively require in-depth and comprehensive study within the framework of separate independent research, remained outside the focus of our attention.

Since the society and government of Kazakhstan are purposely intending to integrate in the global community, which means full compliance to the global standards of human rights, further research is expected to develop the matter of improving Kazakhstan’s healthcare industry in all its aspects, including healthcare workers’ labor regulations.

## **7- Declarations**

### ***7-1-Author Contributions***

Conceptualization, K.X. and Y.N.; methodology, X.K.; software, X.K.; validation, X.K. and Y.N.; formal analysis, X.K. and Y.N.; investigation, K.X.; resources, K.X.; data curation, X.K.; writing—original draft preparation, K.X.; writing—review and editing, X.K. and Y.N.; visualization, X.K.; supervision, X.K. and Y.N.; project administration, X.K.; funding acquisition, X.K. All authors have read and agreed to the published version of the manuscript.

### ***7-2-Data Availability Statement***

The data presented in this study are available in present article.

### ***7-3-Funding***

The authors received no financial support for the research, authorship, and/or publication of this article.

### ***7-4-Institutional Review Board Statement***

The study was conducted in accordance with the Declaration of Helsinki, national legislation and local requirements. Under these guidelines, human rights have been preserved and participants’ safety was considered as a priority for sharing information. During the research, the study made sure to maintain the confidentiality of the respondents. The respondents were not forced to share any personal information.

### ***7-5-Informed Consent Statement***

Informed consent from the participants was taken and confidentiality and privacy were ensured. Both written and verbal approvals from the participants were taken before proceeding with the process of data collection. The names and personal details including e-mail were made confidential for privacy reasons.

## 7-6- Conflicts of Interest

The authors declare that there is no conflict of interest regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancies have been completely observed by the authors.

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## Appendix I

### Questionnaire distributed among medical and pharmaceutical workers in Kazakhstan.

#### 1) Age

- 25-30
- 30-35
- 35-40
- 40-45

#### 2) Gender

- Male
- Female

#### 3) Experience

- 5 years
- 10 years
- 15 years
- More than 15 years

Labor Regulations	1= strongly disagree	2= disagree	3= neutral	4= agree	5= strongly agree
The labors laws and code are sufficient to protect employee rights;					
The laws of government provide guarantees and compensation;					
The laws and regulations are efficient to compensate and protect healthcare workforce;					
The laws positively affect workplace regulation and safety.					
<b>Human Resource Challenges</b>					
Staff burnout is a major challenge in hospitals;					
It is difficult to manage work-life balance due to long shifts;					
The economic benefits are less compared to the nature of the work;					
There are low salaries are limited training and career growth opportunities.					
<b>Labor Compensation</b>					
The legal frameworks of compensation reflect significant contribution of healthcare workers;					
The existing compensation as per law are fair and commensurate with employees' responsibilities and workload;					
The provided compensations are adequate to attract and retain workforce and increase their motivation;					
The labor compensation implemented in hospitals influence job satisfaction.					