



ISSUES RELATED TO EMPLOYMENT CONTRACTS IN ARMENIA AND HOW TO ADDRESS THEM

SURVEY EXECUTIVE SUMMARY

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Problems related to employment contracts in Armenia and how to address them

Survey/Prisma Research Company

This survey aims to identify existing problems related to employment contracts in Armenia and provide reliable and representative data to stakeholders for elaboration of evidence-based recommendations and decision-making to reform the field. Therefore, the focus was on incidence of and reasons behind conclusion/non-conclusion of contracts, industry-related specificities, feedback, and recommendations by employed workers, employers, and field experts on how to improve the situation with employment contracts and the level of employee awareness of the rights and responsibilities governed by employment contracts. The survey employed quantitative, as well as qualitative methods

The survey is a part of “Data-based policy improvement process in the field of labor law” Project implemented jointly by Armavir Development Center NGO, Prizma Research Company, Public Journalism Club NGO and Center for Rights Development NGO

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EXECUTIVE SUMMARY

The aim of “Data-based policy improvement process in the field of labor law” survey is to identify existing problems related to employment contracts in Armenia and provide reliable and representative data to stakeholders for elaboration of evidence-based recommendations and decision-making to reform the field. To achieve this objective, the following aspects were reviewed:

- ✓ Incidence of conclusion/non-conclusion of employment contracts and reasons behind,
- ✓ Sectoral specificities of conclusion/non-conclusion of employment contracts,
- ✓ Feedback and recommendations from employed workers, employers, and field experts on the reasons behind non-conclusion of employment contracts and how to improve the situation,
- ✓ Employees’ awareness of the rights and responsibilities governed by employment contracts.

The survey was conducted through collection and analysis of primary and secondary data through quantitative and qualitative methods of data collection. A series of studies and reports on labor and employment rights and employment contracts, as well as relevant legal framework was reviewed. Quantitative survey was conducted among the working population of the urban and rural communities of Armenia. Settlements were selected through stratified sampling technique (Yerevan, other urban settlement, rural settlement). 384 paid workers (with 95% confidence interval and 5% margin of error) responded to the survey. In addition, information on some crucial aspects was collected from respondents about other family members employed in IT sector. Hence, data about additional 170 paid workers was also collected. Primary analysis of the data from quantitative survey was followed by in-depth interviews with experts (12) and employers (10) to ensure abundance of information.

Main Findings

Aspects related to employment contracts

61.8% of the respondents (including other members employed in IT sector) are employed under written employment contract, 7.1% - under civil contracts, and **22.1%** - based on verbal arrangement, i.e., without a contract. The remaining 4% are employers (owners with permanent paid workers hired), and for 5% it was difficult to identify the type of contract. A statistically significant correlation was found between availability of a written contract and the variables related to the respondents’ gender, age, level of education, industry, number of employees in the enterprise, the pay rate and sector of employment. Namely, written contracts are mostly missing among male respondents, those in the 17-25 and 66-75 age group, those with lower education, and respondents who are employed in private sector and small companies with lower pay.

Absence of written contract is more common to construction industry (70.3% has no written contract), agriculture (70%), hotel, restaurant, public catering businesses and other service sectors (57.9%), and wholesale and retail commerce (57.6%). As suggested by qualitative data, lack of written contracts is mostly common to small firms, private family businesses, and homeworkers. Moreover, representatives of civil rights advocacy organizations indicated that

most of requests and complaints they receive were essentially from provinces (Marz) and rural communities.

Written contracts for the 78.4% of the respondents who have one are open term, while for 16.6% contracts are concluded for a definite term, and 5% had difficulty to respond to the question. For the prevailing majority of those who have term contracts (69.5%), the contract is determined by the nature of the works performed or the performance requirements. **67.7%** of respondents who have a written contracts indicated that they had their original copy of the contract, whereas **27.2%** didn't have a contract, and the remaining 5.1% could not answer. A statistically significant correlation was found between the respondent having/not having own original copy of employment contract and the variables of age, sector of employment and contract term. 36–45-year-old respondents who have employed in manufacturing, hotel, restaurant and public catering businesses, and education sector with open-term contracts don't have their own copy.

Qualitative data suggests that only when encountered with violations of labor rights it becomes apparent that either the employee has no written employment contract or has one but does not have own original copy of it. Even when offered a written contract, employees mostly fail to read it before signing. Moreover, they review and refer to it only when violations occur. Experts believe that employees don't request their original copy of the contract, as they don't acknowledge the importance of its content.

The prevailing majority of those who have written contracts (74.2%) think that they are fully or partly aware of its content, 14.6% find themselves to be somehow aware of it, and only a small share (9.5%) has said about having little or no overview of the content whatsoever. The remaining 1.7% could not answer to the question. In contrast to the findings of the survey, experts think that, in fact, a large segment of employees is not quite aware of the content of their contracts, and they don't read it until they encounter a problem. Sometimes employees are not only unaware of the content of their employment contract, but also of the type of contract concluded – whether it is an employment contract, a civil law contract, an open-term or termed contract.

The Labor Code of Armenia stipulates that parties may consent to a probation period¹, when concluding an employment contract, implying that employees must have a written contract even for probation. 34.6% of respondents who have been through probation did have a written employment contract, whereas 62.5% didn't, and 2.9% could not answer. Some of respondents (56.6%) who did not have a written contract for probation were paid in that period, whereas 41.9% did not get paid, and 1.5% could not answer. As suggested by qualitative data, failure to conclude a written contract during probation is explained by the ability of the employer to fire the employee, if the former does not wish to continue employment relations with him or her. It should be noted, however, that the Labor Code does prescribe a simple way of terminating the employment contract based on performance during probation.

In terms of benefits offered at work, 61.7% of respondents have mentioned about having access to paid leave (the rest have mentioned about not having access to such benefits or could not answer), 59.4% - to final settlement in case of termination of employment contract, and 51.8% - temporary disability benefit due to illness, 47.4% - to maternity leave or childcare leave for up to three years, 42.2% - to overtime pay, and 34.9% - to discharge payment.

¹ See the Labor Code of Armenia, Article 91, <http://www.irtek.am/views/act.aspx?aid=150003#>

Reasons behind non-conclusion

More than half of respondents think that employers do not conclude contracts with employees to avoid taxes (51%), 12.7% find that it is easier to come to a verbal arrangement, while 9.3% think that non-conclusion is initiated by employees to keep hold of welfare benefits, and the rest could not answer. Quantitative data is validated by the qualitative data collected.

Most respondents (80.5%) agree that having a written employment contract helps employees feel safer in relations with employers, while around 9% find that it doesn't help, and 10.4% could not answer.

Experts also find that tax evasion is one of main reasons behind non-conclusion. Moreover, such non-conclusion benefits both the employer and the employee - on the one hand, the employer avoids paying the taxes, and on the other hand, the employee sometimes gets higher pay compared to what he or she would have with a written contract. Besides, employees' preference for not having a contract is correlated with being a beneficiary of government welfare program to get both the welfare benefit and the pay.

From employers' perspective, the main gap in labor legislation is associated with employee resignation or termination of the employment contract by the latter. While employers are mandated by law to notify the employee beforehand about termination and explicitly draw on reasons behind it to fire an employee², and to pay a penalty for non-compliance with said regulations, there is no such leverage for the employees.

Contract termination or modification

71% of respondents find that they are fully or partly aware of when the employer may initiate termination of their employment contract, 17.3% find that they know it to some extent, while 8.3% said that they are mostly or fully unaware of it, and 3.4% could not answer. 34.1% of respondents have experienced termination of employment contract initiated by employer, of which 34.2% was duly notified about termination by the employer in writing, while 65.8% was not notified, in case of 62.5% the ground, reason and date of termination was not indicated. 36.2% of respondents have experienced change in the workplace, working hours, position title or type of employment contract, with 39.3% percent having been informed about such changes in written form, and 60.7% were not informed.

Infringed rights and redress mechanisms

Only **8.6%** of respondent mentioned about ever having their labor rights infringed: the rest have either not had such an experience or could not answer. According to qualitative data, violations of employment contracts vary – starting from absence of any contract at all up to violations related to its content and lack of any chance to access various safeguards. Moreover, infringements may take place in various stages of works – in the beginning, in the process, and at the end, upon quitting or dismissal.

Without a written contract, employees are deprived of all safeguards that could have been available with a written contract, such as, leave, final settlement, maternity leave, etc. Without a

² See the Labor Code of Armenia, Article 113

written contract, employees are deprived of the chance to access the cumulative age pension system. Only 9.4% (3 respondents) of respondents who experienced violation of their rights at workplace have brought it up to any agency/individual, the rest did not take any step to restore their infringed right.

In case of potential infringement of the labor rights, most common response was as follows: 18.8% would not bring this up to anyone, 15.4% would bring this up to the direct supervisor or manager, 12% - to the representative of the Human Rights Defender's office (Note: HRD does not deal with this any longer), 9.1% - to a lawyer, advocate, or any other advocacy agency, and 8.4% - to the court. The respondents did not mention the Health and Labor Inspectorate.

Qualitative data suggest that in case of rights infringement, employees do not necessarily bring this up to anyone due to lack of awareness, fear of losing the job, perceiving the job as something temporary and unstable, and lack of trust in advocacy agencies.

There are rare instances when employees restore their rights in court, as the process is resource-intensive in terms of time, cost, and tension. In general, advocacy experts note that when violations of labor rights are appealed in other agencies or courts, it ends up with employee quitting the job even if they win the case, or because of the pressure from the employer to affect the job setting, thereby leading to poor relations.

Mechanisms to reduce infringements related to employment contract and labor rights include stronger surveillance from the tax authority, as well as inspection authority. In addition to surveillance mechanisms, elevated importance of written contracts enshrining the labor rights and content, as well as raising the awareness on consequences of absence of such contract is acknowledged.

Covid-19 context

Some changes were observed in the number of employees' responsibilities, their pay rate, weekly hours of employment and position, driven by the pandemic. In general, respondents were essentially not informed, rather than informed about such changes. 36.4% of respondents who experienced change in the number of their responsibilities were informed about it, 27.3% of those experiencing change in pay, 23.9% of those experiencing change in the weekly employment hours, and 11.8% of those whose position changed were informed about it accordingly.

20.8% of respondents fully agree with the Government Decree effective as of October 1 mandating employees to get vaccinated or regularly take PCR tests; 15.4% partly agree with it, while the majority – 60.7% - disagree with it.

Data collected from expert interviews suggest that the requirement of vaccination or PCR test may create pressure on relations between the employee and employer.

Conclusion and recommendation. Around **22.1%** of paid employees have no written employment contract. This is more common in construction industry, agriculture, hotel, restaurant businesses, and public catering services, as well as wholesale and retail commerce. In case of paid employment, lack of written contract is more common among the youngest (17-25) and the oldest (66-75) layers of population, as well as among individuals with lower level of education. Evasion of tax payments was mentioned by most respondents (51%) as the main

reason behind non-conclusion of a written employment contract. Moreover, the survey suggests that practice of non-conclusion is much common during probation. **62.5%** of those who were on probation did not have a written contract in that period. Employers think that written contract for probation may complicate firing the employee in post-probation period if the latter is not hired. However, review of legislation suggests that this popular opinion has no viable legal justification.

Around **27.2%** of those who have written contracts do not have their original copy. According to experts, working individuals do not adequately acknowledge the importance of reading it and refer to it only after problems occur.

Captivating is the finding that only 8.6% of respondents mentioned about their labor rights being infringed in their workplace, with only 9.4% (3 persons) of them having taken any step in this regard. Moreover, around 19% of respondents said that they would not take any step if a problem occurred. According to experts, reasons behind such a phenomenon is the lack of awareness among citizens, fear to lose the job, lack of trust in the advocacy system, inefficiency of solving the problem through court (cost, time, the issue becomes irrelevant, and so forth), as well as lack of culture to fight for one's labor rights, and the public attitude towards it. It is important to note, that review of Government Program for 2021-2026 shows that some measures are planned in this area. Namely, to ensure implementation of labor rights, simplification, and reform of the regulatory framework on labor relations is planned to develop the capacities of the inspection authority in charge of governmental surveillance, as well as through a set of instruments of non-governmental surveillance vis-à-vis compliance with the regulations. Moreover, experts who responded to the survey recommended setting up an extrajudicial authority for labor disputes, to include representatives of trade unions, employers' union, Ministry of Labor and Social Affairs, and inspection authorities, as well as the employer and the employee engaged in the dispute. In addition, it was recommended to engage in public outreach to improve public awareness of competencies of authorized inspectorates in charge of governmental surveillance.

OVERVIEW OF THE SURVEY

AIM AND OBJECTIVES

The aim of “Data-based policy improvement process in the field of labor law” survey is to identify the existing problems related to employment contracts in Armenia and provide reliable and representative data to stakeholders for elaboration of evidence-based recommendations and decision-making to reform the field. Therefore, following aspects were reviewed:

- ✓ Incidence of conclusion/non-conclusion of employment contracts and reasons behind,
- ✓ Sectoral specificities of conclusion/non-conclusion of employment contracts,
- ✓ Feedback and recommendations from employed workers, employers, and field experts on the reasons behind non-conclusion of employment contracts and how to improve the situation,
- ✓ Employees' awareness of the rights and responsibilities governed by employment contracts.

METHODOLOGY

The survey was conducted through collection and analysis of primary and secondary data through quantitative and qualitative data collection methods. To design the survey instruments, initial phase focused on review of the present context in Armenia, utilizing reports and data from local and international organizations (such as OECD, IMF, etc.), as well as other reviews providing an insight into the sector.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The survey aims to identify the existing problems related to employment contracts in Armenia and provide reliable and representative data to stakeholders for elaboration of evidence-based recommendations and decision-making to reform the field. Summarizing the findings of the survey led to the following conclusions:

Survey respondents (including other members of the family employed in IT sector) are mostly employed in education sector, hotel, restaurant and public catering industries, wholesale and retail commerce, manufacturing, public administration, construction, health, and agriculture.

In terms of gender (including other members of the family employed in IT sector), male respondents are more likely to be engaged in construction, public administration, manufacturing, and agriculture. The majority of female respondents are involved in health, education sectors, hotel, restaurant and public catering industries, wholesale and retail commerce.

More than half of respondents (including other members of employed in IT sector) - **61.8%** - are employed with a written employment contract, 7.1% - are employed through a civil law contract, while **22.1%** - through verbal arrangement, meaning that they have no written contract, and 4% are employers, yet 5.1% could not indicate the type of their contract. Written contract is correlated with the variables of respondents' gender, age, education, employment sector, number of company employees, and the pay rate and sector of employment. Interestingly, female respondents are more likely to have written contracts, compared to male respondents. Younger (17-25 age group) and older (66-75 age group) respondents are less likely to have a written contract compared to the respondents in the 26-65 age group. Respondents with higher level of education are more likely to have a written contract compared to those with lower level of education. Non-conclusion is more common in the private sector. Most of employed respondents are engaged in small firms. Employees with low pay are more likely not to have a written contract compared to those getting higher pay.

Failure to conclude contracts is more common in the sectors of construction, agriculture, wholesale and retail commerce, and hotel, restaurant and public catering businesses.

The contract for most of employees who do have a written contract is concluded for an open term, and for smaller number of employees – for a specific term. Conclusion of a term contract is driven by the nature of works to be performed.

More than half of respondents who have a contract, have their own original copy of it. Having/not having own original copy of employment contract is correlated with respondents' age, sector of employment and term of contract. Major share of those who don't have their copy of contracts include respondents in the age group of 36-45. Failure to have their own copy of

contract is more common in the manufacturing, hotel, restaurant and public catering industries, sectors of education, health, and commerce. Failure to have or request own copy of contract is correlated with non-acknowledgement of the importance of the content by employees.

Survey suggests that the practice of non-conclusion is common during probation. According to labor laws of Armenia, parties may agree to a probation while concluding an employment contract, implying that during probation employees must have a contract. However, more than half of respondents did not have any written employment contract during probation, which is a breach of law. More than half of respondents who did not have a written contract during probation were, however, paid for that period, while the rest – were not. Explanation behind failure to sign a contract for probation is the ability of employer to fire the employee easily if the former does not want to continue employment relations with the latter. However, review of legal regulations suggest that this popular opinion has no viable legal justification.

Prevailing share of respondents believe that they are either fully or mostly aware of the content of their contract, and only a small share does not know its content. Knowing the content is correlated with the level of education. In contrast to the findings of the survey, experts believe that a large segment of employees, in fact, is not quite aware of the content and does not read it, until they encounter a problem. In this regard, legal consciousness and awareness of employees is acknowledged.

In terms of social safeguards, more than half of respondents have access to paid leave, final settlement of accounts in case of termination of employment contract, and pension for temporary disability caused by illness. Few respondents have said about having access to maternity leave or childcare leave, overtime pay, and discharge benefit. Access to social safeguards is directly correlated with availability of written contract.

More than half of respondents believe that employers refrain from written contract with employees to evade taxes; oral arrangements are easier to come to; and employees initiate non-conclusion to keep hold of their social welfare benefits. Failure to conclude a contract in agriculture and services is correlated also with jobs being short-term. Experts claim that civil law contracts are concluded for short-term, namely, seasonal jobs or not concluded at all. Employee turnover is high in these sectors as they may shift to another employer for higher pay. In this sense, failure to have a contract gives flexibility both to the employer and the employee, especially when it comes to terminating the relations with employee.

In the meantime, the main gap employers identified in relation to the Labor Code relates to employees quitting the job. While the employer must inform the staff beforehand about dismissal and pay a penalty in case of failure to notify in a proper or timely manner, the employee suffers no penalty or sanction in case of quitting the job at any point in time. Moreover, employees may terminate the employment contract without any reason, while employers cannot do so, and must clearly indicate the grounds and reason for terminating the employment contract – this being quite a challenge, in most cases, and stirring a dispute.

The prevailing majority of respondents agree with the statement that written employment contract stirs a feeling of security in relations with the employer. In terms of availability of a contract, the feeling of security is correlated with gender and having/not having a contract. Around one third of respondents has experienced an attempt of termination of employment contract initiated by the employer. A small share of them, however, have received a prior notice

about contract termination. Same is true for respondents who have experienced changes in the workplace, working time, position title or type of employment contract.

Breaches of employment contracts vary in nature – from having no written contract at all to breaches related to content, and lack of any chance to access various safeguards.

The employment rights of only a small share of respondents were infringed at their workplace. Interestingly, only a small share of them has taken steps to restore their infringed rights. Moreover, the respondents mostly said that if encountered with a potential infringement they would not bring this up to anyone. The next most common option indicated was bringing this up to the attention of direct supervisor or employer, the HRD, lawyer, advocate or any other advocacy entity and court. In most cases employers do not bring issues up to anyone due to lack of awareness, fear of losing the job, considering the job as temporary and unsustainable, lack of trust in protecting systems, inefficiency of settlement through court (cost, time, issue becomes irrelevant, etc.), as well as lack of culture to fight for own employment rights, and for reasons of social attitude towards it.

To restore infringed rights, employees may arrive at consensus with the employer, complain to the inspection authority and court. Most experts recommend setting up an extrajudicial body for settling labor disputes, as an alternative to courts.

Measures to reduce violations related to employment contracts and labor rights include stronger surveillance both by the tax and inspection authorities, as well as enhancement of awareness and legal consciousness.

Due to Covid-19 pandemic, work arrangements for most of employees did not change. Whenever any change did occur, respondents were mostly not informed rather than informed of such changes.

As regards Government decree effectuated from October 1, according to experts, the requirement of vaccination or test may cause violations of employees' rights, and tension. Some experts think that such decision may also entail violations related to contracts in the sense that in case of failure fire the employee for failure to meet these requirements, the contract is terminated, and labor relations continue without him or her.

Thus, analysis of the data collected from quantitative questionnaires, and interviews with experts and employers, and the conclusions lead to the following **recommendations**:

- Since employers review their rights and content of contracts upon facing employment related violations, large outreach campaigns are needed.
- According to findings of the survey, none of respondents complained to the inspection authority regarding violation of their rights. In this regard it is recommended to inform about the functions and role of the inspection authority during outreach campaign.
- Since employees avoid court settlement of labor disputes, because of time and cost, as well as potential deterioration of relations, it is recommended to create an extrajudicial authority for settlement of labor disputes, to include representatives of trade unions, employers' union, Ministry of labor and social affairs, and inspection authority, an independent representative of the non-governmental sector, as well as the employee and employer who are disputing parties. If such an authority is effective, the labor-related problems will be addressed quickly.

Full version of the report is available in Armenian at www.epfarmeria and www.prizma.am websites.